

EXHIBIT 238

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL) MDL No. 2804
PRESCRIPTION OPIATE)
5 LITIGATION) Case No. 1:17-MD-2804
6)
7) Hon. Dan A. Polster
THIS DOCUMENT RELATES TO)
8 ALL CASES)
9)

10 Thursday, January 10, 2019
11

12 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
13 CONFIDENTIALITY REVIEW
14

15
16 Videotaped Deposition of GARY HILLIARD,
held at Winstead PC, 2728 N. Harwood St.,
17 Dallas, Texas, commencing at 9:06 a.m. on the
above date, before Susan Perry Miller,
18 Registered Diplomate Reporter, Certified
Realtime Reporter, Certified Realtime
19 Captioner, and Notary Public.
20
21

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1 PROCEEDINGS
2 GARY HILLIARD,
3 having taken an oath to tell the truth, the
4 whole truth, and nothing but the truth,
5 testified as follows:
6 EXAMINATION
7 QUESTIONS BY MR. BOGLE:
8 Q. Good morning.
9 A. Good morning.
10 Q. Can I get your full name,
11 please?
12 A. Gary Lawrence Hilliard.
13 Q. And, Mr. Hilliard, my name is
14 Brandon Bogle. I'm going to be asking you
15 some questions today. Before we get into the
16 substance, though, have you ever had your
17 deposition taken before?
18 A. I have not.
19 Q. Okay. Just a few ground rules
20 to hopefully make things go as smoothly as
21 possible for us. I'm going to ask questions
22 and I'd ask that you wait till I finish my
23 question before you provide an answer, number
24 one, to make sure you understand my question;
25 number two, to allow the court reporter to

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1 more easily transcribe things.
2 Does that make sense?
3 A. Yes, it does.
4 Q. Okay. And if at any point in
5 time you want to take a break, just let me or
6 your counsel know. I'm happy to do that.
7 It's not an endurance contest.
8 The other thing is if I ask a
9 question that you don't hear or don't
10 understand, please ask me to repeat it or
11 rephrase it and I will do so. Otherwise, I
12 assume if you're answering my question that
13 you understood it. Is that fair?
14 A. Yes.
15 Q. Okay. Where are you currently
16 employed, sir?
17 A. Tech Data Corporation.
18 Q. Where is that located?
19 A. The corporate office is in
20 Clearwater, Florida.
21 Q. Okay. Are you out of
22 Clearwater or somewhere else?
23 A. I'm out of a Fort Worth
24 facility.
25 Q. Give me just a general sketch

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1 of what you do at Tech Data. What is your
2 job?
3 A. I'm a dangerous goods safety
4 advisor, so my role is to manage hazardous
5 materials for our company in the United
6 States, Canada and Mexico.
7 Q. Okay. Does Tech Data in any
8 way, shape or form sell, distribute or deal
9 in opioids?
10 A. No. It's all electronics.
11 Q. All electronics, okay.
12 When did you start working for
13 Tech Data?
14 A. In September 2016.
15 Q. Okay. And prior to working at
16 Tech Data, were you employed at McKesson?
17 A. I was.
18 Q. Okay. Can you give me the span
19 of time that you worked for McKesson?
20 A. From 1997 till 2016.
21 Q. Okay. And why did you leave
22 McKesson?
23 A. I was part of a workforce
24 reduction.
25 Q. Okay. Were you given the

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1 opportunity to transfer to another department
2 or just outright told that they were
3 eliminating your position and there was no
4 other position for you?
5 A. Outright elimination.
6 Q. Okay. Now, the time from 1997
7 to 2016 while you were at McKesson, during
8 that entire span, were you a director of
9 regulatory affairs?
10 A. I started as a manager of
11 regulatory affairs.
12 Q. Okay. So tell me what time
13 period you were the manager.
14 A. It was approximately a year, so
15 approximately '97-98.
16 Q. Okay.
17 A. I don't remember the exact time
18 frame.
19 Q. That approximation is good
20 enough. So approximately 1998 you take over
21 as director of regulatory affairs. Do you
22 hold that position until 2016 when you leave?
23 A. That's correct.
24 Q. Okay. Do you know what month
25 in 2016 you left?

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1 A. July, I believe.
 2 Q. Okay. So give me a sense,
 3 while you were at McKesson working at
 4 director of regulatory affairs, what your
 5 general job responsibilities were.
 6 A. My role changed over the years,
 7 but as I started, I had responsibility for
 8 DEA compliance for our pharma distribution
 9 centers within the U.S. I was over 30
 10 facilities, I don't recall exactly, but...
 11 so that entailed things such as the
 12 management of the SOP, the audit, ARCOS, loss
 13 and theft, any issue resolution; I would
 14 assist with fiscal DEA audits, also with
 15 corrective actions if there were any
 16 corrective actions with that; the suspicious
 17 order program that was in place at the time.
 18 Q. Okay.
 19 A. And then additionally I also
 20 had responsibility for HAZMAT, hazardous
 21 materials. I also had responsibility for EPA
 22 environmental issues, waste disposal. I also
 23 had responsibility for DEA registrations,
 24 state licensure. I was also active with the
 25 industry association with NWDA on working

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1 committees for both federal and state.
 2 Q. Is that the -- I'm sorry, go
 3 ahead. Keep going.
 4 A. And did some work on the OSHA
 5 side as well for safety.
 6 Q. Okay.
 7 A. Also, I had responsibility for
 8 FDA actions for -- as it related to our
 9 operations.
 10 Q. Okay. I've got a few follow-up
 11 questions for you. Are you done? I want to
 12 make sure you're done.
 13 A. That's fine.
 14 Q. Good. Okay. A few follow-up
 15 questions for you on a couple of these points
 16 you gave me. You said you were responsible
 17 for the SOP. What SOP are you referring to?
 18 A. Section 55 is what we referred
 19 it to when we started. It was already in
 20 place when I arrived at McKesson, and follow
 21 up on that until a migration took place,
 22 changes took place in the 2006 time frame.
 23 Q. Okay. Because you guys went
 24 from Section 55 to approximately 2007, you go
 25 to the LDMP, the Lifestyle Drug Management

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1 Program? True?
 2 A. True.
 3 Q. Okay. And then in
 4 approximately 2008, you go to the Controlled
 5 Substances Monitoring Program, otherwise
 6 known as the CSMP. True?
 7 A. True.
 8 Q. Okay. So did you have
 9 responsibility for -- let's do one by one.
 10 So the Section 55 component, you had
 11 responsibility for Section 55 in what
 12 respect?
 13 A. Updates and adherence for our
 14 operations to the policy.
 15 Q. For what period of time did you
 16 have that responsibility?
 17 A. From '97 till 2006.
 18 Q. Okay. Let's talk about the
 19 LDMP. Did you have any responsibility
 20 related to the LDMP?
 21 A. I helped create that LDMP
 22 process.
 23 Q. Okay. So after it was created,
 24 what was your responsibility in relationship
 25 to that program?

Page 21

1 A. I worked with our team to
 2 ensure compliance with that program and to
 3 develop it.
 4 Q. Okay. What about the CSMP?
 5 What involvement did you have with the CSMP?
 6 A. I also helped write that SOP as
 7 well.
 8 Q. What sort of experience did you
 9 have with drafting SOPs prior to drafting the
 10 LDMP, for example?
 11 A. I had drafted SOPs in the past
 12 with my previous employers as well, so no
 13 formal training, if you will, for SOPs. But
 14 just -- when something needed to be revised
 15 or something wasn't in place and needed to be
 16 created, then I would work on the SOPs for
 17 that.
 18 Q. Okay. Prior to drafting the
 19 LDMP, had you had any experience drafting any
 20 SOPs that related to suspicious order
 21 monitoring for controlled substances?
 22 A. Just the experience from what
 23 we gained from the original Section 55, and
 24 then the changes that were necessary as we
 25 developed that program.

Page 22

1 Q. Okay. And where did you work
2 before you came to McKesson?
3 A. FoxMeyer Drug Company.
4 Q. What did you do for them just
5 generally?
6 A. Same thing, manager of
7 regulatory affairs.
8 Q. How long were you with them?
9 A. Approximately two years.
10 Q. Immediately before McKesson?
11 A. Immediately before. McKesson
12 acquired FoxMeyer so it was part of the
13 acquisition.
14 Q. Gotcha.
15 Did you have any sort of
16 regulatory job prior to working at FoxMeyer?
17 A. I did. I worked regulatory for
18 a reverse distributor of pharmaceuticals.
19 Q. Can you say that again? I'm
20 sorry.
21 A. A reverse distributor.
22 Q. Reverse distributor.
23 A. RDS was the name, Reverse
24 Distribution Services.
25 Q. How long did you work for them?

Page 23

1 A. Two years.
2 Q. Immediately preceding FoxMeyer?
3 A. Correct.
4 Q. Any other regulatory position
5 that you held prior to joining McKesson?
6 A. I worked in environmental, and
7 so I gained an environmental background
8 through waste management, Chemical Waste
9 Management to be more specific, so we were
10 trained in EPA requirements and Department of
11 Transportation, FAA requirements as well.
12 Q. What company are you referring
13 to there?
14 A. Chemical Waste Management.
15 Q. Chemical Waste Management.
16 Okay. Any others prior to
17 McKesson that are regulatory-related?
18 A. No.
19 Q. All right. So a couple of
20 other follow-ups. You mentioned, while at
21 McKesson, having responsibility related to
22 audit processes. In what respect were you
23 responsible for audit processes at McKesson?
24 A. I would update the audit as
25 necessary and then I'd go out to our

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1 facilities and conduct audits.
2 Q. Okay. You're talking about a
3 specific SOP that you would update for
4 audits, or what are you referring to by
5 "update the audit"?
6 A. There was an audit that was
7 already written and it correlated to
8 Section 55, and I audited against that.
9 Q. Okay. How long did you have
10 responsibility for audits?
11 A. From '97 till approximately
12 2014.
13 Q. Okay. Just from prior
14 depositions, I understand that Tracy Jonas
15 also had some responsibility for audits. How
16 did your responsibility for audits compare to
17 his?
18 A. So when the audit was changed
19 to -- we referred to it as a STARS audit, and
20 so we co-wrote good portions of those audits,
21 and then he ultimately took over facilitation
22 of the audit program.
23 Q. Okay. And that would have been
24 in 2014, you're saying?
25 A. I'm not sure when -- the STARS

Page 25

1 audit took place probably before 2014, but
2 I'm not exactly sure of the date.
3 Q. Okay. All right. You
4 mentioned responsibilities related to
5 suspicious order -- I think "purchasing" was
6 the term you used. Maybe you used a
7 different term, but something related to
8 suspicious order monitoring or purchasing.
9 A. Monitoring.
10 Q. What was your responsibility
11 there?
12 A. To -- adherence to our SOP.
13 Q. Okay. Going back to
14 Section 55, the LDMP and the CSMP?
15 A. Correct.
16 Q. During what time period did you
17 have those responsibilities?
18 A. 1997 until -- again, I'm not
19 sure when the STARS ended. It was handed off
20 to Dave Gustin. I don't know, 2013 -- 2014,
21 maybe.
22 Q. An approximation is fine.
23 A. I'm not sure.
24 Q. I'm not going to hold you to an
25 exact date. I just want to get a sense of

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1 what the scope is here.
 2 You also said you handled DEA
 3 registrations and state licensure?
 4 A. Correct.
 5 Q. For what time period did you
 6 have those responsibilities?
 7 A. '97 till 2016.
 8 Q. Okay. You mentioned being
 9 actively involved in the -- I think it was
 10 NWMA? Is that right?
 11 A. HDMA.
 12 Q. Right. I think you mentioned
 13 the predecessor term.
 14 A. NWDA, National Wholesale Drug
 15 Association.
 16 Q. Which then became the HDMA,
 17 right?
 18 A. And now is NDA, I believe, yes.
 19 Q. I think maybe HDA.
 20 A. HDA.
 21 Q. I think so. It doesn't matter.
 22 A. Okay.
 23 Q. Okay. What sort of committees
 24 were you on at NWDA?
 25 A. I was on the federal committees

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1 in reference to DEA, also state committee,
 2 pharmaceutical waste management committee,
 3 transportation committee.
 4 Q. Okay. Let's talk about the
 5 federal DEA committee. What did you do --
 6 what was your involvement with that
 7 committee? What did you do?
 8 A. We would meet typically
 9 annually and with our counterparts from other
 10 wholesalers and sometimes manufacturers, and
 11 we would discuss issues that were happening,
 12 proposed regulations that were coming up.
 13 That's primarily it.
 14 Q. Okay. And so this NWDA was a
 15 trade association for pharmaceutical
 16 distributors primarily, correct?
 17 A. That's correct.
 18 Q. Okay. And so as part of that
 19 association, as a member of that association,
 20 you would have interactions with other
 21 employees of other pharmaceutical
 22 distributors. Is that fair?
 23 A. That's correct.
 24 MR. EPPICH: Object to the
 25 form.

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1 Give me a minute to object, if
 2 you don't mind.
 3 QUESTIONS BY MR. BOGLE:
 4 Q. How frequently would you attend
 5 meetings for NWDA, approximately?
 6 A. Approximately twice a year.
 7 Q. Okay. Would those meetings
 8 generally be attended by employees of other
 9 pharmaceutical distributors as well?
 10 A. That's correct.
 11 Q. Okay. You also mentioned
 12 having responsibility for ARCOS. Can you
 13 tell me what you did related to ARCOS?
 14 A. I would train our employees at
 15 our facilities when they needed training. I
 16 would assist in problems that they may have
 17 understanding what types of code assignments
 18 would be associated with a type of
 19 transaction. If they had error reports that
 20 they needed assistance with, and any
 21 communications from ARCOS corporate, then I
 22 would typically work with them on that.
 23 Q. Okay. And when it came to the
 24 ARCOS training you're referring to, are you
 25 talking about training people at the

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1 distribution centers?
 2 A. That's correct.
 3 Q. All right. So from 1997 to
 4 2007, would you have had responsibility for
 5 regulatory compliance for all of McKesson's
 6 distribution centers?
 7 A. For the pharmaceutical
 8 division.
 9 Q. Okay. Well, let me rephrase it
 10 because I think that's a fair clarification.
 11 So from 1997 to 2007, would you
 12 have had responsibility for compliance with
 13 the Controlled Substances Act as it pertained
 14 to all of McKesson's distribution centers?
 15 A. That would be correct.
 16 Q. Okay. And, now, in 2008, as I
 17 understand it, there were some additional
 18 people added to McKesson's regulatory team.
 19 Is that true?
 20 A. That's correct.
 21 Q. Okay. And so when that change
 22 occurred and additional people were added, as
 23 I understand it, you would then have not been
 24 responsible for all of those distribution
 25 centers when it pertains to Controlled

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1 Substance Act compliance. True?
 2 MR. EPPICH: Object to the
 3 form.
 4 A. There were regional directors
 5 and I did not have a region. So the regional
 6 directors specifically worked with the new
 7 programs that were being developed, whereas I
 8 worked on other operational aspects.
 9 QUESTIONS BY MR. BOGLE:
 10 Q. Okay. From the information
 11 that I've looked at from the time period of
 12 1997 to 2007, when it came to Controlled
 13 Substances Act compliance at McKesson, you
 14 guys had a three-person team which consisted
 15 of Donald Walker, yourself, and Bruce
 16 Russell. Is that true?
 17 A. When I started, there was -- I
 18 reported to Dan White, who was a VP of
 19 regulatory, and I reported to -- I'm sorry,
 20 not reported. I also had a colleague that
 21 was a director of regulatory affairs, Rolly
 22 Blythe.
 23 Q. Okay. When did Mr. White leave
 24 the company, roughly?
 25 A. He transitioned to a different

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1 role, and I do not recall the date.
 2 Q. The other name was Rolly White,
 3 I believe you gave me?
 4 A. Blythe.
 5 Q. Oh, Blythe, I'm sorry. When
 6 did that individual cease working in
 7 regulatory affairs, roughly?
 8 A. He retired, and again, I don't
 9 recall the exact time frame, but it was
 10 probably a few years, three, four years, in.
 11 Q. To your tenure?
 12 A. Correct.
 13 Q. What did Rolly Blythe, what did
 14 that person generally do during that time
 15 period that they were there?
 16 A. The same role, so he was my
 17 predecessor, and he managed the DEA
 18 compliance.
 19 Q. Okay. And Mr. White, what was
 20 his role?
 21 A. He oversaw the regulatory
 22 department, which included DEA compliance.
 23 Q. So would he have been --
 24 Mr. White been in that role during the same
 25 time that Donald Walker was working in

Page 32

1 regulatory affairs?
 2 A. No.
 3 Q. No. So did Mr. Walker sort of
 4 take his role over?
 5 A. Mr. Walker took over SVP of
 6 operations, and then I started reporting up
 7 through him.
 8 Q. Okay.
 9 A. Again, I don't remember the
 10 exact time frame.
 11 Q. That's fine.
 12 Do you agree that there is an
 13 ongoing opioid epidemic in this country?
 14 A. I don't know about opioid
 15 epi- -- sorry, epidemic, in those term- -- in
 16 that terminology.
 17 Q. Okay. Do you believe there's
 18 any sort of problem in this country as it
 19 relates to opioids?
 20 MR. EPPICH: Object to the
 21 form.
 22 MR. PERRY: Object to form.
 23 A. I don't know.
 24 QUESTIONS BY MR. BOGLE:
 25 Q. You don't know, okay.

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1 Did you ever receive any
 2 training, formal or informal, about a
 3 potential epidemic in this country while at
 4 McKesson?
 5 MR. EPPICH: Object to the
 6 form.
 7 QUESTIONS BY MR. BOGLE:
 8 Q. Related to opioids?
 9 MR. EPPICH: Object to the
 10 form.
 11 A. I don't know.
 12 QUESTIONS BY MR. BOGLE:
 13 Q. Did you ever have any
 14 discussions with any of your colleagues at
 15 McKesson about a potential opioid epidemic in
 16 this country?
 17 A. Not that I recall in that
 18 frame -- of that terminology.
 19 Q. Okay. Any other sort of
 20 terminology that you would utilize that you
 21 did have such a discussion?
 22 MR. EPPICH: Object to the
 23 form.
 24 A. There were presentations that
 25 we saw for training after some of the

<p style="text-align: right;">Page 34</p> <p>1 communications took place between McKesson 2 headquarters and DEA headquarters. 3 QUESTIONS BY MR. BOGLE: 4 Q. Okay. Do you recall what 5 presentations you received in that regard? 6 A. There was a DEA conference 7 where they had a presentation and they were 8 talking about the levels of opioids that were 9 being used out -- illegitimately. I don't 10 recall the exact details of it, but they had 11 a presentation -- 12 Q. Okay. 13 A. -- at a national conference. 14 Q. Okay. Would that have been a 15 conference you attended in 2007? 16 A. I don't recall the exact date 17 of that conference. 18 Q. Okay. Did you ever have any 19 personal concern while you were at McKesson 20 that there was an opioid epidemic ongoing? 21 A. No, I didn't. 22 MR. EPPICH: Object to the 23 form. 24 QUESTIONS BY MR. BOGLE: 25 Q. Okay. Are you familiar with</p>	<p style="text-align: right;">Page 36</p> <p>1 Okay, Mr. Hilliard. What I've 2 handed you as Exhibit 1 you see is an e-mail 3 on the first page and then sort of a 4 PowerPoint slide deck behind it. 5 Do you see that? 6 A. I see that. 7 Q. Okay. And starting with the 8 e-mail on the first page, you see that's an 9 e-mail from Donald Walker dated May 2, 2012, 10 to several individuals, including yourself, 11 right? 12 A. I see that. 13 Q. Okay. And the subject is Know 14 Your Customer. 15 Do you see that subject line? 16 A. Yes, I see that. 17 Q. He says there in the first line 18 in the body: On Monday I will be making a 19 presentation to the ISMC sales force at NSC 20 around Know Your Customer. 21 What was Know Your Customer? 22 A. It's the name of the 23 presentation. 24 Q. Okay. Are you aware of any 25 program that McKesson implemented at any</p>
<p style="text-align: right;">Page 35</p> <p>1 the term "diversion"? 2 A. I am. 3 Q. What do you understand that 4 term to mean? 5 MR. EPPICH: Object to the 6 form. Calls for a legal conclusion. 7 A. Controlled substance 8 pharmaceuticals being utilized outside the 9 course of legal requirements under the CSA. 10 QUESTIONS BY MR. BOGLE: 11 Q. And while you were at McKesson, 12 did you see any instances of diversion of 13 McKesson-supplied opioids? 14 MR. EPPICH: Object to the 15 form. 16 A. Not that I recall. 17 QUESTIONS BY MR. BOGLE: 18 Q. All right. I'm going to hand 19 you what I'm marking as Exhibit 1.1651, which 20 is also Exhibit 1 to your deposition, and 21 that's MCKMDL00498169. 22 (McKesson-Hilliard Exhibit 1 23 was marked for identification.) 24 QUESTIONS BY MR. BOGLE: 25 Q. There you go, sir.</p>	<p style="text-align: right;">Page 37</p> <p>1 point in time to know their customers as it 2 related to opioid purchases? 3 MR. EPPICH: Object to the 4 form. 5 A. I don't recall it in that 6 specifics. 7 QUESTIONS BY MR. BOGLE: 8 Q. Okay. The next sentence in the 9 e-mail says: This is intended to be an 10 awareness awakening session that we as a 11 regulatory team will follow up on during the 12 upcoming year. 13 Do you see that? 14 A. I see that. 15 Q. Okay. And then if you look, 16 I'm on page .5, the page numbers at the top 17 right. That says there Government's View of 18 the Problem at the top of that slide. 19 Do you see that? 20 A. I see that. 21 Q. Okay. And in the box on the 22 left it says: Alarming rate of increase of 23 prescription drug abuse beginning 24 approximately five years ago, especially 25 hydrocodone (Vicodin) and opioid pain drugs</p>

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1 (Oxycontin and Oxycodone).
2 Do you see that?
3 A. I see that.
4 Q. Okay. And on the right it
5 says, the first bullet point: CDC currently
6 classifies prescription drug abuse as an
7 epidemic.
8 Do you see that?
9 A. I see that.
10 Q. Does this jog your memory about
11 receiving any information about a potential
12 opioid epidemic while you were at McKesson?
13 MR. EPPICH: Object to the
14 form. Misstates the document.
15 A. I vaguely recall the
16 presentation. I don't recall the details of
17 the presentation but this would have been
18 considered a training document.
19 QUESTIONS BY MR. BOGLE:
20 Q. Okay. Is this a document you
21 would have reviewed as a matter of course
22 when you received it?
23 A. I don't recall receiving it,
24 but it does -- it does seem familiar, so
25 probably in the normal course I would review

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1 it.
2 Q. Okay. Let's take a look at the
3 second bullet point here. It says: 27,000
4 died from prescription drug overdoses in
5 2007, a five fold increase since 1990.
6 Do you see that?
7 A. I see that.
8 Q. Okay. And the next bullet
9 point says: During the same time period ten
10 fold increase in medical use of painkillers
11 such as oxycodone and hydrocodone.
12 Do you see that there?
13 A. I see that.
14 Q. Okay. Do you ever recall
15 becoming aware that there was a, during that
16 1990-2007 time frame, a ten-fold increase in
17 the use of painkillers like oxycodone and
18 hydrocodone?
19 MR. EPPICH: Object to the
20 form.
21 A. I don't recall.
22 QUESTIONS BY MR. BOGLE:
23 Q. And the next bullet point says:
24 Today number of overdose deaths involving
25 prescription pain medication exceeds deaths

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1 from heroin and cocaine combined.
2 Do you see that?
3 A. I see that.
4 Q. And the last bullet point said:
5 In some states death from prescription
6 painkiller overdoses surpass those from
7 traffic accidents.
8 Do you see that?
9 A. I see that.
10 Q. Is that information you recall
11 being aware of while you were at McKesson?
12 A. Again, I don't recall the
13 details of this.
14 Q. Are you aware that there have
15 been congressional hearings in the last
16 couple of years related to the opioid
17 epidemic?
18 A. I am.
19 Q. You are, okay.
20 I'm going to hand you what I'm
21 marking as Exhibit 2 to your deposition,
22 which is Exhibit 1.264. This is a public
23 document so no Bates numbers.
24 (McKesson-Hilliard Exhibit 2
25 was marked for identification.)

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1 QUESTIONS BY MR. BOGLE:
2 Q. Okay. You see here this is a
3 document from the U.S. House of
4 Representatives Committee on Energy and
5 Commerce from May 4, 2018.
6 Do you see that?
7 A. I see that.
8 Q. Okay. And it's -- the
9 regarding line says: Hearing entitled
10 "Combating the Opioid Epidemic: Examining
11 Concerns About Distribution and Diversion."
12 Do you see that there?
13 A. I do see that.
14 Q. Okay. Have you followed the
15 outcomes of any of these congressional
16 hearings on the opioid epidemic?
17 A. I have not.
18 Q. You said you were aware of
19 them, right?
20 A. I am aware of them but I have
21 not followed them. I've been out of
22 pharmaceuticals for a while now.
23 Q. If you look at the second page
24 of this document, underneath the chart it
25 says: The U.S. continues to experience an

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1 opioid epidemic, which has worsened over the
 2 last two decades. Opioid-involved overdose
 3 deaths are the leading cause of injury death
 4 in the U.S. and take the lives of 115
 5 Americans per day.
 6 Is that a statistic you've seen
 7 before?
 8 MR. EPPICH: Objection,
 9 foundation.
 10 A. It is not.
 11 QUESTIONS BY MR. BOGLE:
 12 Q. "According to a recent report
 13 issued by the Centers for Disease Control and
 14 Prevention (CDC), prescription or illicit
 15 opioids were involved in nearly two-thirds of
 16 all drug overdose deaths in the U.S. during
 17 2016 - a 27.7 percent increase from 2015. In
 18 total, more than 351,000 people have died
 19 since 1999 due to an opioid-involved
 20 overdose."
 21 And then it says: The crisis
 22 has become so severe that the average life
 23 expectancy declined in 2016 from the previous
 24 year, largely because of opioid overdoses.
 25 Do you see that?

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1 MR. EPPICH: Objection,
 2 foundation.
 3 A. I see it on the page.
 4 QUESTIONS BY MR. BOGLE:
 5 Q. Okay. And the information I
 6 read to you, those last three sentences
 7 there, any of that information you were aware
 8 of prior to today?
 9 A. I was not.
 10 Q. And so from our discussion at
 11 the beginning of the deposition, you worked
 12 at McKesson for, what, just shy of 20 years,
 13 right?
 14 A. Correct.
 15 Q. Okay. And so during that time
 16 period, did you have the belief that
 17 protecting the health and safety of the
 18 public should be the most important
 19 consideration for a pharmaceutical
 20 distributor like McKesson?
 21 MR. EPPICH: Object to the
 22 form.
 23 A. I don't know.
 24 QUESTIONS BY MR. BOGLE:
 25 Q. Okay. Did you ever consider

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1 what sort of considerations should be most
 2 important for your job as you performed it?
 3 MR. EPPICH: Object to the
 4 form.
 5 A. We complied with the CSA
 6 requirements.
 7 QUESTIONS BY MR. BOGLE:
 8 Q. Okay. Did you ever consider
 9 why those requirements existed?
 10 MR. EPPICH: Object to the
 11 form.
 12 QUESTIONS BY MR. BOGLE:
 13 Q. What their purpose was?
 14 MR. EPPICH: Object to the
 15 form.
 16 A. Protection of the supply chain
 17 under controlled substances.
 18 QUESTIONS BY MR. BOGLE:
 19 Q. When you mean -- when you say
 20 "protection of the supply chain," what do you
 21 mean by that?
 22 A. Controlled substances stay in
 23 legitimate markets.
 24 Q. And why would it be important
 25 for controlled substances to stay in

Page 45

1 legitimate markets --
 2 MR. EPPICH: Object to the
 3 form.
 4 QUESTIONS BY MR. BOGLE:
 5 Q. -- from your understanding?
 6 MR. EPPICH: Object to the
 7 form. Foundation.
 8 A. It's a requirement of the CSA.
 9 QUESTIONS BY MR. BOGLE:
 10 Q. Okay. Anything beyond that?
 11 MR. EPPICH: Same objections.
 12 A. I don't know.
 13 QUESTIONS BY MR. BOGLE:
 14 Q. Okay. While you were with
 15 McKesson, the company was a distributor of
 16 controlled substances, right?
 17 A. That's correct.
 18 Q. Okay. And those controlled
 19 substances included opioid products, right?
 20 A. That's correct.
 21 Q. Okay. And opioid products are
 22 generally in the class of drugs known as
 23 narcotics, right?
 24 MR. EPPICH: Object to the
 25 form; foundation.

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1 A. Some of them can be.
 2 QUESTIONS BY MR. BOGLE:
 3 Q. Okay. Are you aware of any
 4 opioids that are nonnarcotic?
 5 MR. EPPICH: Same objections.
 6 A. Not that I recall.
 7 QUESTIONS BY MR. BOGLE:
 8 Q. We talked about this a little
 9 bit at the beginning of the deposition, but
 10 in your role as manager and then director of
 11 regulatory affairs, you would have had
 12 responsibility for having understanding of
 13 the Controlled Substances Act, right?
 14 A. Correct.
 15 Q. And the Controlled Substances
 16 Act itself, you understand, is designed to
 17 prevent the diversion of controlled
 18 substances like opioids, right?
 19 MR. EPPICH: Object to the
 20 form. Calls for a legal conclusion.
 21 A. I don't know.
 22 QUESTIONS BY MR. BOGLE:
 23 Q. Okay. Do you have any sense as
 24 to what the purpose of the Controlled
 25 Substances Act was while you worked at

Page 47

1 McKesson?
 2 A. To prevent diversion.
 3 Q. Okay. And under the Controlled
 4 Substances Act while you were with McKesson,
 5 one of McKesson's responsibilities was to
 6 have effective controls against diversion,
 7 right?
 8 A. That's correct.
 9 MR. EPPICH: Object to the
 10 form. Calls for a legal conclusion.
 11 QUESTIONS BY MR. BOGLE:
 12 Q. Another responsibility under
 13 the Controlled Substances Act while you were
 14 with McKesson would be to monitor for
 15 suspicious controlled substances orders,
 16 right?
 17 MR. EPPICH: Object to the
 18 form. Calls for a legal conclusion.
 19 A. We followed the processes and
 20 procedures that we had in place that were to
 21 comply with the CSA requirements.
 22 QUESTIONS BY MR. BOGLE:
 23 Q. Okay. But did you have an
 24 understanding while you were at McKesson that
 25 the company had a responsibility to monitor

Page 48

1 for suspicious orders --
 2 MR. EPPICH: Same objections.
 3 QUESTIONS BY MR. BOGLE:
 4 Q. -- for controlled substances?
 5 A. We did monitor for controlled
 6 substance orders.
 7 Q. Okay. Did you know where that
 8 responsibility came from?
 9 A. CSA requirements.
 10 Q. Okay. And while you were at
 11 McKesson, did you also understand that there
 12 was a responsibility to report suspicious
 13 orders when they were detected to the DEA?
 14 MR. EPPICH: Object to the
 15 form. Calls for a legal conclusion.
 16 A. The process was to report
 17 controlled substances orders according to the
 18 SOP.
 19 QUESTIONS BY MR. BOGLE:
 20 Q. Okay. And the SOP required
 21 that if suspicious orders were detected, they
 22 were to be reported to the DEA, correct?
 23 MR. EPPICH: Object to the
 24 form.
 25 A. They were reported to the DEA.

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1 QUESTIONS BY MR. BOGLE:
 2 Q. Okay. When you say "they,"
 3 we're talking about suspicious orders, right,
 4 for controlled substances?
 5 A. That's correct.
 6 Q. Okay. And did you also
 7 understand while you were at McKesson that
 8 the company was to block any orders that it
 9 deemed suspicious?
 10 MR. EPPICH: Object to the
 11 form.
 12 A. That was not a requirement of
 13 the CSA.
 14 QUESTIONS BY MR. BOGLE:
 15 Q. Okay. At any point in time
 16 while you were at the company?
 17 MR. EPPICH: Object to the
 18 form. Calls for a legal conclusion.
 19 A. We made changes, developed
 20 changes to our processes, and -- with the
 21 CSMP program, and so with the CSMP program
 22 that program did block.
 23 QUESTIONS BY MR. BOGLE:
 24 Q. Okay. Do you have an
 25 understanding as to why the CSMP blocked

Page 50

1 suspicious orders?

2 MR. EPPICH: Object to the

3 form.

4 QUESTIONS BY MR. BOGLE:

5 Q. Why that was a component of it?

6 MR. EPPICH: Object to the

7 form.

8 A. A guidance document provided by

9 Rannazzisi.

10 QUESTIONS BY MR. BOGLE:

11 Q. And do you recall when you

12 first saw that guidance document?

13 MR. EPPICH: Object to the

14 form.

15 A. Approximately 2006.

16 QUESTIONS BY MR. BOGLE:

17 Q. Okay. And so prior to

18 receiving that document in approximately

19 2006, it was your personal belief that there

20 was no responsibility for McKesson to block

21 suspicious orders. Is that true?

22 MR. EPPICH: Object to the

23 form. Calls for a legal conclusion.

24 A. It was not a requirement of the

25 CSA.

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1 QUESTIONS BY MR. BOGLE:

2 Q. Okay. And so if I'm

3 understanding your testimony correctly, prior

4 to the implementation of the CSMP in 2008, it

5 was not McKesson's policy to block suspicious

6 orders. Is that true?

7 MR. EPPICH: Object to the

8 form.

9 A. Blocking of the orders was not

10 a requirement under the CSA.

11 QUESTIONS BY MR. BOGLE:

12 Q. Yeah. I'm just asking whether

13 it was a company policy to block suspicious

14 orders prior to 2008. I'm not asking about

15 the CSA right now.

16 MR. EPPICH: Object to the

17 form.

18 A. We complied with requirements

19 under the CSA.

20 QUESTIONS BY MR. BOGLE:

21 Q. Yeah. I'm just asking whether

22 prior to 2008 when the CSMP was implemented,

23 was it McKesson's policy to not block

24 suspicious orders when they were detected?

25 MR. EPPICH: Object to the

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1 form.

2 A. We complied with the CSA

3 requirements.

4 QUESTIONS BY MR. BOGLE:

5 Q. Okay. I guess I don't

6 understand how that applies to my question.

7 I'm just asking if you guys blocked

8 suspicious orders prior to 2008.

9 MR. EPPICH: Object to the

10 form.

11 A. Blocking was not a requirement.

12 QUESTIONS BY MR. BOGLE:

13 Q. So the answer is no, that that

14 wasn't done --

15 MR. EPPICH: Object to the

16 form.

17 QUESTIONS BY MR. BOGLE:

18 Q. -- prior to 2008?

19 A. We complied with the CSA

20 requirements.

21 Q. Okay. I got that that's your

22 answer, but I'm trying to just get a specific

23 answer to a specific question, which is to

24 nail down in time when McKesson, to your

25 understanding, started blocking suspicious

Page 53

1 orders for controlled substances. Can you

2 tell me when that started occurring?

3 A. The CSMP, which was about 2008.

4 Q. Okay. I'm going to hand you

5 what I'm marking as Exhibit 3, which is

6 1.1464, and that's MCKMDL00478906.

7 (McKesson-Hilliard Exhibit 3

8 was marked for identification.)

9 QUESTIONS BY MR. BOGLE:

10 Q. And you see this is a letter

11 from the U.S. Department of Justice Drug

12 Enforcement Administration dated

13 September 27, 2006.

14 Do you see that?

15 A. I see that.

16 Q. Is this the guidance document

17 from Mr. Rannazzisi that you were referring

18 to a minute ago?

19 A. Yes, it is.

20 Q. Okay. So you've seen this

21 document before. True?

22 A. Yes.

23 Q. Okay. I want to look at a

24 couple of components of this letter. It

25 says, in the first line: This letter is

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1 being sent to every commercial entity in the
2 United States registered with the Drug
3 Enforcement Administration (DEA) to
4 distribute controlled substances. The
5 purpose of this letter is to reiterate the
6 responsibilities of controlled substance
7 distributors in view of the prescription drug
8 abuse problem our nation currently faces.
9 Do you see that?
10 A. I see that.
11 Q. The term "reiterate" is used
12 there in that sentence. What do you
13 understand the term "reiterate" to mean?
14 MR. EPPICH: Object to the
15 form. Foundation.
16 A. This is written by
17 Mr. Rannazzisi. I don't know what he's
18 referring to, reiterate.
19 QUESTIONS BY MR. BOGLE:
20 Q. I'm just asking if you
21 understand what the term "reiterate" means.
22 MR. EPPICH: Asked and
23 answered.
24 A. I don't know.
25 --oOo--

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1 QUESTIONS BY MR. BOGLE:
2 Q. You don't know what the term
3 "reiterate" means in general use?
4 MR. EPPICH: Object to the
5 form. Foundation.
6 A. I don't know.
7 QUESTIONS BY MR. BOGLE:
8 Q. Okay. Going down to the third
9 paragraph in this letter, I'm looking at the
10 sentence that starts with "Distributors are,
11 of course."
12 Do you see that in the middle
13 of the paragraph?
14 A. Third paragraph? Yes, I see
15 that now.
16 Q. All right. It says:
17 Distributors are, of course, one of the key
18 components of the distribution chain. If the
19 closed system is to function properly as
20 Congress envisioned, distributors must be
21 vigilant in deciding whether a prospective
22 customer can be trusted to deliver controlled
23 substances only for lawful purposes.
24 Do you see that?
25 A. Yes, I see that.

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1 Q. Okay. Do you agree with that
2 sentence?
3 MR. EPPICH: Object to the
4 form. Foundation.
5 A. I don't know.
6 QUESTIONS BY MR. BOGLE:
7 Q. You don't have an opinion one
8 way or the other whether that's an accurate
9 statement?
10 A. No, I don't.
11 Q. Okay. Do you have any opinion
12 as to whether McKesson should have at all
13 times been vigilant in deciding which
14 customers got controlled substances from
15 them?
16 MR. EPPICH: Object to the
17 form.
18 A. I don't know.
19 QUESTIONS BY MR. BOGLE:
20 Q. Okay. And it says -- it goes
21 on: This responsibility is critical, as
22 Congress has expressly declared that the
23 illegal distribution of controlled substances
24 has a substantial and detrimental effect on
25 the health and general welfare of the

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1 American people.
2 Do you see that?
3 A. Yes, I see that.
4 Q. Okay. Do you agree that
5 illegal distribution of controlled substances
6 has a substantial and detrimental effect on
7 the health and general welfare of the
8 American people?
9 MR. EPPICH: Object to the
10 form. Foundation.
11 A. I don't know.
12 QUESTIONS BY MR. BOGLE:
13 Q. Okay. Is that something you
14 ever considered while you were at McKesson,
15 that concept?
16 MR. EPPICH: Object to the
17 form.
18 A. I don't recall.
19 QUESTIONS BY MR. BOGLE:
20 Q. Okay. Going to the second page
21 here of the letter, the third paragraph that
22 starts with "The statutory factors."
23 Do you see that?
24 A. Yes, I see that.
25 Q. It says there: The statutory

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1 factors DEA must consider in deciding whether
2 to revoke a distributor's registration are
3 set forth in 21 U.S.C. 823(e). Listed first
4 among these factors is the duty of
5 distributors to maintain effective controls
6 against diversion of controlled substances
7 into other than legitimate medical,
8 scientific, and industrial channels.

9 Do you see that?

10 A. Yes, I see that.

11 Q. And you're familiar with that
12 portion of the regulations, right?

13 MR. EPPICH: Object to the
14 form.

15 A. I don't recall.

16 QUESTIONS BY MR. BOGLE:

17 Q. Okay. If you go to the next
18 paragraph, it starts with: The DEA
19 regulations require all distributors to
20 report suspicious orders of controlled
21 substances.

22 Do you see that?

23 A. Yes, I see that.

24 Q. Okay. And you understand that
25 at all times that you were with McKesson that

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1 the DEA regulations did require distributors
2 to report suspicious orders of controlled
3 substances?

4 MR. EPPICH: Object to the
5 form. Calls for a legal conclusion.

6 A. It was under the CSA.

7 QUESTIONS BY MR. BOGLE:

8 Q. Right. So you knew that's
9 something that McKesson was supposed to do
10 under the CSA, right?

11 MR. EPPICH: Same objections.

12 A. Yes, I recall.

13 QUESTIONS BY MR. BOGLE:

14 Q. Okay. The next paragraph that
15 starts with "It bears emphasis," do you see
16 that?

17 A. Yes, I see that.

18 Q. It says: It bears emphasis
19 that the foregoing reporting requirement is
20 in addition to, and not in lieu of, the
21 general requirement under 21 U.S.C. 823(e)
22 that a distributor maintain effective
23 controls against diversion.

24 Do you see that sentence?

25 A. Yes, I see that.

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1 Q. Were you aware while you were
2 at McKesson that these were two different
3 concepts and that there was a reporting
4 requirement and a separate requirement to
5 maintain effective controls against
6 diversion?

7 MR. EPPICH: Object to the
8 form. Calls for a legal conclusion.

9 A. I don't recall.

10 QUESTIONS BY MR. BOGLE:

11 Q. Okay. While you were working
12 at McKesson, did you operate as if there were
13 two separate requirements, a reporting
14 requirement and also a requirement to have
15 effective controls against diversion?

16 MR. EPPICH: Object to the
17 form.

18 A. I don't recall.

19 QUESTIONS BY MR. BOGLE:

20 Q. Okay. It goes on and says:
21 Thus, in addition to reporting all suspicious
22 orders, a distributor has a statutory
23 responsibility to exercise due diligence to
24 avoid filling suspicious orders that might be
25 diverted into other than legitimate medical,

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1 scientific, and industrial channels.

2 Do you see that?

3 A. I see that.

4 Q. Okay. And that's referring to
5 the requirement to block suspicious orders
6 when they're detected, right?

7 MR. EPPICH: Object to the
8 form. Foundation.

9 A. I'm not sure.

10 QUESTIONS BY MR. BOGLE:

11 Q. Okay. What do you think that
12 refers to, then?

13 A. I don't know.

14 Q. Okay. So do you have any
15 understanding of what that -- what he's
16 getting at there in that sentence?

17 A. I don't know.

18 Q. Okay. Do you recall ever
19 asking any of your colleagues to help you
20 understand what Mr. Rannazzisi was saying in
21 that sentence that I just read?

22 A. Not that I recall.

23 Q. Okay. Do you ever recall
24 reaching out to anyone at the DEA asking them
25 to explain to you what was meant by the

<p style="text-align: right;">Page 62</p> <p>1 sentence I just read?</p> <p>2 A. Not that I recall.</p> <p>3 Q. Okay. That would have fallen</p> <p>4 within your purview, though. If the DEA's</p> <p>5 view is that this is part of McKesson's</p> <p>6 responsibilities under the Controlled</p> <p>7 Substances Act in 2006 time frame, that would</p> <p>8 have been within your purview of your</p> <p>9 responsibilities, right?</p> <p>10 MR. EPPICH: Object to the</p> <p>11 form. Assumes facts not in evidence.</p> <p>12 A. I don't recall.</p> <p>13 QUESTIONS BY MR. BOGLE:</p> <p>14 Q. Okay. I think we talked about</p> <p>15 earlier in the deposition that compliance</p> <p>16 with the Controlled Substances Act would have</p> <p>17 been part of your responsibilities in this</p> <p>18 time frame, right?</p> <p>19 A. That's correct.</p> <p>20 Q. Okay. So if the DEA --</p> <p>21 Mr. Rannazzisi from the DEA is indicating</p> <p>22 here that there's a requirement here, a</p> <p>23 regulatory requirement, to avoid filling</p> <p>24 suspicious orders of controlled substances,</p> <p>25 would that not have fallen within your</p>	<p style="text-align: right;">Page 64</p> <p>1 asking you is, if you were unclear as to what</p> <p>2 Mr. Rannazzisi was saying here about avoiding</p> <p>3 filling suspicious orders, how could you</p> <p>4 design a regulatory program to meet this</p> <p>5 demand?</p> <p>6 MR. EPPICH: Object to the form</p> <p>7 and to the extent it misstates any</p> <p>8 prior testimony.</p> <p>9 A. I don't -- I don't recall.</p> <p>10 QUESTIONS BY MR. BOGLE:</p> <p>11 Q. Okay. The next paragraph down</p> <p>12 says: In a similar vein, given the</p> <p>13 requirement under Section 823(e) that a</p> <p>14 distributor maintain effective controls</p> <p>15 against diversion, a distributor may not</p> <p>16 simply rely on the fact that the person</p> <p>17 placing the suspicious order is a DEA</p> <p>18 registrant and turn a blind eye to the</p> <p>19 suspicious circumstances. Again, to maintain</p> <p>20 effective controls against diversion as</p> <p>21 Section 823(e) requires, the distributor</p> <p>22 should exercise due care in confirming the</p> <p>23 legitimacy of all orders prior to filling.</p> <p>24 Do you see that?</p> <p>25 A. Yes, I see that.</p>
<p style="text-align: right;">Page 63</p> <p>1 purview to make sure that McKesson complied</p> <p>2 with that portion of the regulations?</p> <p>3 MR. EPPICH: Object to --</p> <p>4 object to the form.</p> <p>5 A. We worked within the</p> <p>6 requirements of CSA, and based on the</p> <p>7 guidance document, we developed the LDMP</p> <p>8 program, then into the CSMP program that did</p> <p>9 block the orders.</p> <p>10 QUESTIONS BY MR. BOGLE:</p> <p>11 Q. Well, LDMP did not have a</p> <p>12 blocking mechanism to it, did it?</p> <p>13 A. No.</p> <p>14 Q. Okay. So I guess what I'm</p> <p>15 trying to understand is if you didn't</p> <p>16 understand what was meant by this sentence</p> <p>17 from Mr. Rannazzisi's letter, how could you</p> <p>18 properly develop a program to address what</p> <p>19 he's asking you to do?</p> <p>20 MR. EPPICH: Object to the</p> <p>21 form. Misstates prior testimony.</p> <p>22 A. I don't recall the</p> <p>23 circumstances that took place.</p> <p>24 QUESTIONS BY MR. BOGLE:</p> <p>25 Q. Okay. But I guess what I'm</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. The last sentence I just read</p> <p>2 there, what do you understand that to mean?</p> <p>3 MR. EPPICH: Objection to the</p> <p>4 form; foundation.</p> <p>5 A. I'm not sure what it means.</p> <p>6 QUESTIONS BY MR. BOGLE:</p> <p>7 Q. Okay. So while you were</p> <p>8 working at McKesson after you read this</p> <p>9 letter, you were unclear on what was meant by</p> <p>10 that last sentence there about confirming the</p> <p>11 legitimacy of all orders prior to filling?</p> <p>12 MR. EPPICH: Object to the</p> <p>13 form. Misstates prior testimony.</p> <p>14 A. I don't recall what I thought</p> <p>15 at that time.</p> <p>16 QUESTIONS BY MR. BOGLE:</p> <p>17 Q. Okay. But as you read it here</p> <p>18 today, you're not sure what is meant by that.</p> <p>19 Is that true?</p> <p>20 MR. EPPICH: Same objections.</p> <p>21 A. I don't recall.</p> <p>22 QUESTIONS BY MR. BOGLE:</p> <p>23 Q. No. I'm asking what you think</p> <p>24 today.</p> <p>25 A. I don't know.</p>

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1 Q. Okay. You don't have an
2 opinion about what that means?
3 A. No.
4 Q. Okay. But we can agree that
5 you did perform regulatory compliance,
6 including for the Controlled Substances Act
7 for McKesson, all the way up until about two
8 years ago, right?
9 A. That's correct.
10 Q. Okay. And we can also agree
11 this is a letter that you would have read in
12 your course of employment at McKesson, right?
13 A. That's correct.
14 Q. Did you follow up with anyone
15 at DEA about any of -- anything in this
16 letter that you were unclear on?
17 A. Not that I recall.
18 Q. Did you follow up with any of
19 your colleagues at McKesson about anything in
20 this letter that you felt you were unclear
21 on?
22 A. I don't recall.
23 Q. But I think you said earlier
24 that upon reading this letter, the takeaway
25 from McKesson was that the company needed to

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1 start blocking suspicious orders of
2 controlled substances when they were
3 detected. True?
4 MR. EPPICH: Objection to the
5 form. Misstates prior testimony.
6 A. I said that this is when we
7 started developing the new CSMP program which
8 blocked the orders.
9 QUESTIONS BY MR. BOGLE:
10 Q. Right. So this was the impetus
11 for creating a program that would block
12 suspicious orders, right?
13 MR. EPPICH: Objection to the
14 form. Asked and answered.
15 A. I don't recall the details
16 around what preempted the development, but
17 this is about the same time frame.
18 QUESTIONS BY MR. BOGLE:
19 Q. Okay. I think you said earlier
20 it was this guidance letter that did prompt
21 the creation of the blocking mechanism in the
22 CSMP.
23 Did I misunderstand you there?
24 A. As I recall, this was about the
25 same time frame and this is when we started

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1 the development of the CSMP.
2 Q. Okay. But the actual CSMP
3 itself did not go into effect until
4 approximately May 2008, right?
5 A. That sounds about correct.
6 Q. Okay. So just shy of two years
7 after this letter, correct?
8 MR. EPPICH: Object to the
9 form.
10 A. That is the date listed.
11 QUESTIONS BY MR. BOGLE:
12 Q. Okay. Do you recall there
13 being any meetings with yourself and other
14 people at the regulatory department at
15 McKesson to sort of walk through this letter
16 we're looking at here in Exhibit 3?
17 MR. EPPICH: Object to the
18 form.
19 A. I really don't recall.
20 QUESTIONS BY MR. BOGLE:
21 Q. Do you agree that properly
22 reporting suspicious orders when they are
23 detected gives DEA the ability to investigate
24 those orders?
25 MR. EPPICH: Object to the

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1 form. Foundation.
2 A. I don't know.
3 QUESTIONS BY MR. BOGLE:
4 Q. You don't know, okay.
5 Do you agree that blocking
6 suspicious orders is important to ensure that
7 diversion can be prevented?
8 MR. EPPICH: Object to the
9 form. Foundation.
10 A. That is one element that can
11 assist.
12 QUESTIONS BY MR. BOGLE:
13 Q. Okay. And in the concept of
14 having effective controls against diversion
15 which we just looked at in this letter, can
16 you think of any better way to have effective
17 controls against diversion other than
18 blocking suspicious orders --
19 MR. EPPICH: Objection.
20 QUESTIONS BY MR. BOGLE:
21 Q. -- of controlled substances?
22 MR. EPPICH: Object to the
23 form; foundation, and incomplete
24 hypothetical.
25 A. I don't know.

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1 QUESTIONS BY MR. BOGLE:
 2 Q. Okay. Well, do you think that
 3 blocking orders of suspicious controlled
 4 substances orders is a good way to have
 5 effective controls against diversion?
 6 MR. EPPICH: Object to the
 7 form. Asked and answered.
 8 A. That's one method.
 9 QUESTIONS BY MR. BOGLE:
 10 Q. Okay. Can you think of a
 11 better method?
 12 MR. EPPICH: Object to the
 13 form. Foundation.
 14 A. I don't know.
 15 QUESTIONS BY MR. BOGLE:
 16 Q. Okay. Well, having done this
 17 sort of job for 20 years, relying on that
 18 experience, does any other better method come
 19 to mind right now that you could cite for us?
 20 MR. EPPICH: Object to the
 21 form; foundation, asked and answered.
 22 A. I don't know.
 23 QUESTIONS BY MR. BOGLE:
 24 Q. Okay. When you say you don't
 25 know, I mean, it seems like either you have a

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1 better method you could tell us now or you
 2 don't. So I'm just asking if you do or you
 3 don't.
 4 MR. EPPICH: Object to the
 5 form. Asked and answered.
 6 A. I don't know.
 7 QUESTIONS BY MR. BOGLE:
 8 Q. You don't know if you do or you
 9 don't?
 10 A. I have no comment.
 11 Q. Okay. Well, I would ask if --
 12 this is kind of important to me here, so if
 13 you think during the deposition of any way
 14 that would be better to have effective
 15 controls against diversion other than
 16 blocking suspicious orders, can you let me
 17 know?
 18 A. I can.
 19 Q. Okay.
 20 MR. EPPICH: Is this a good
 21 time to take a break?
 22 MR. BOGLE: Sure.
 23 THE VIDEOGRAPHER: Off the
 24 record at 10:01.
 25 (Recess taken, 10:01 a.m. to

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1 10:16 a.m.)
 2 THE VIDEOGRAPHER: All right,
 3 stand by. The time is 10:16, back on
 4 the record. Beginning of File 2.
 5 QUESTIONS BY MR. BOGLE:
 6 Q. Mr. Hilliard, I want to go back
 7 just a step here and talk a little bit about
 8 sort of the hierarchy of the regulatory
 9 department while you were at McKesson. So
 10 let's focus on while you were director of
 11 regulatory affairs, which I think you told me
 12 was roughly 1998 to 2016.
 13 So during that time frame, as
 14 director of regulatory affairs, who would
 15 have been your superiors in the regulatory
 16 department?
 17 A. Dan White, and when I started
 18 in '97 to -- again, I don't remember the
 19 exact time frame, a couple of years; and then
 20 Ron Bone.
 21 Q. What was his title?
 22 A. SVP, operations.
 23 Q. And that's senior vice
 24 president?
 25 A. Yes, correct.

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1 Q. All right. Of operations?
 2 A. Correct.
 3 Q. Okay.
 4 A. Regulatory rolled up under
 5 that.
 6 Q. Okay.
 7 A. Don Walker after that. And
 8 then at some point there, Bruce Russell came
 9 in between us and I reported directly to
 10 Bruce instead of Don.
 11 Q. Okay.
 12 A. And then it was back to Don
 13 directly, and then finally to Krista Peck.
 14 Q. What was her job title?
 15 A. SVP of regulatory department.
 16 QUESTIONS BY MR. BOGLE:
 17 Q. Okay.
 18 A. That's not the exact -- correct
 19 title, but SVP of regulatory.
 20 Q. And again, when you say "SVP,"
 21 it means senior vice president.
 22 A. Senior vice president.
 23 Q. I just want to make sure the
 24 record is clear. I think I know what you
 25 mean but I want to make sure it's clear.

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1 Okay. Let me ask it to you
2 this way just so I understand. So at all
3 times from 1998 to 2016, would there have
4 only been one position in the regulatory
5 department higher than yours on the corporate
6 ladder?

7 A. No, because at the time point
8 for which I reported to Bruce Russell, he
9 would have been a VP, and then Bruce would
10 have reported to Don, so there would have
11 been one additional level there.

12 Q. Okay. So in what time period
13 would that have been where there was two
14 levels above yours?

15 A. I would say 2000, early --
16 first part of the 2000s. I'm not sure how
17 far that goes into.

18 Q. Okay.

19 A. I don't remember when Bruce
20 retired.

21 Q. Okay.

22 A. I want to say 2014, he retired,
23 approximately.

24 Q. Okay. So from this time period
25 from 1998 to 2016, there were points in time

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1 where there's one person, one position higher
2 than yours in the regulatory department, and
3 some points in time where there's two
4 positions higher than yours in the regulatory
5 department. Am I understanding that right?

6 A. That's correct.

7 Q. Okay. So as director of
8 regulatory affairs, then, from '98 to 2016,
9 were there positions below yours in the
10 regulatory department, people that reported
11 to you?

12 A. I had one direct report.

13 Q. Okay. And during what time
14 period?

15 A. Approximately 2013 to 2016.

16 Q. Okay. Who was that?

17 A. Cynthia. My mind is going
18 blank on her last name. All she managed was
19 licensure for our facilities.

20 Q. Okay. All right. Shifting
21 gears a little bit, then -- actually, strike
22 that.

23 Again, when we started the
24 deposition, you listed off quite a few
25 different areas of responsibility that you

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1 had over time in the regulatory department.
2 Did you consider each of the areas that you
3 had responsibility for to be important areas,
4 important things to you?

5 MR. EPPICH: Object to the
6 form.

7 A. My job was important to me.

8 QUESTIONS BY MR. BOGLE:

9 Q. Okay. And did you feel that
10 you had an important job for McKesson
11 generally, that you held an important role at
12 the company?

13 MR. EPPICH: Object to the
14 form.

15 A. In my opinion, I felt worthy
16 and important to the company.

17 QUESTIONS BY MR. BOGLE:

18 Q. Okay. I guess my question is a
19 little different. Did you feel like your
20 position itself was an important position to
21 the company, that it performed important
22 functions to the company?

23 MR. EPPICH: Object to the
24 form.

25 A. In my opinion, I felt it was

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1 important.

2 QUESTIONS BY MR. BOGLE:

3 Q. Okay. Beginning in 2005, do
4 you recall the DEA beginning to question the
5 distribution practices of the Lakeland
6 distribution center specifically?

7 MR. EPPICH: Object to the
8 form.

9 A. I don't recall specifically the
10 Lakeland facility.

11 QUESTIONS BY MR. BOGLE:

12 Q. You do or you do not?

13 A. I do not.

14 Q. Do not, okay.

15 Do you recall the DEA in 2005
16 questioning the distribution practices of
17 McKesson generally as it pertained to opioid
18 products?

19 MR. EPPICH: Object to the
20 form.

21 A. No, I do not.

22 QUESTIONS BY MR. BOGLE:

23 Q. Okay. And do you recall the
24 Lakeland distribution center at all, that it
25 existed?

<p style="text-align: right;">Page 78</p> <p>1 A. Yes, I do.</p> <p>2 Q. Okay. And during 2005, you</p> <p>3 would have been responsible for regulatory</p> <p>4 compliance for that distribution center,</p> <p>5 right?</p> <p>6 A. DEA responsibilities were held</p> <p>7 by DC management for their facilities, and I</p> <p>8 would be brought in for questions,</p> <p>9 assistance, SOP compliance; but the DC</p> <p>10 managers had their -- were responsible for</p> <p>11 the compliance in their four walls.</p> <p>12 Q. Okay. And during that time</p> <p>13 period in '05, that would have been William</p> <p>14 Mahoney, true?</p> <p>15 A. That's correct.</p> <p>16 Q. For Lakeland?</p> <p>17 A. Yes, that's correct. Yep.</p> <p>18 Q. Do you recall being in any</p> <p>19 meetings with the DEA in 2005 and 2006 where</p> <p>20 they raised concerns about McKesson's supply</p> <p>21 of hydrocodone to internet pharmacies?</p> <p>22 MR. EPPICH: Object to the</p> <p>23 form.</p> <p>24 A. I attended a meeting in 2005.</p> <p>25 We were asked to participate in a</p>	<p style="text-align: right;">Page 80</p> <p>1 in Exhibit 4 we've got a memorandum from the</p> <p>2 FDA -- I'm sorry, the DEA, Mr. Mapes at the</p> <p>3 DEA to Mr. Rannazzisi at the DEA, and also</p> <p>4 attached is some PowerPoint slides, right?</p> <p>5 A. Yes, that's correct.</p> <p>6 Q. Okay. And just looking here,</p> <p>7 the subject of this memorandum says "Internet</p> <p>8 Presentation with McKesson Corp. on</p> <p>9 September 1, 2005."</p> <p>10 Do you see that?</p> <p>11 A. Yes, I see that.</p> <p>12 Q. Okay. And then in the first</p> <p>13 paragraph it notes who was present, and you</p> <p>14 would agree with me that you're listed as one</p> <p>15 of the people that was present for this</p> <p>16 meeting, right?</p> <p>17 A. I am listed.</p> <p>18 Q. Okay. And you were present,</p> <p>19 right?</p> <p>20 A. That's correct.</p> <p>21 Q. Okay. And the last sentence of</p> <p>22 the first paragraph says: The purpose of the</p> <p>23 meeting was to address the illegal domestic</p> <p>24 Internet pharmacy problem and their source of</p> <p>25 supply.</p>
<p style="text-align: right;">Page 79</p> <p>1 presentation on internet pharmacies and we</p> <p>2 attended that meeting there at DEA</p> <p>3 headquarters.</p> <p>4 QUESTIONS BY MR. BOGLE:</p> <p>5 Q. Okay. Do you recall any of the</p> <p>6 substance of that meeting?</p> <p>7 A. They provided a presentation to</p> <p>8 us.</p> <p>9 Q. Anything else beyond that that</p> <p>10 you recall?</p> <p>11 A. They brought to our attention a</p> <p>12 couple of pharmacies that we needed to look</p> <p>13 into.</p> <p>14 Q. Okay. Do you remember any of</p> <p>15 those pharmacies, which ones they were?</p> <p>16 A. Not by name.</p> <p>17 Q. Okay. I'm going to hand you</p> <p>18 what I'm marking as Exhibit 4, which is</p> <p>19 1.1946, and that's MCKMDL00496859.</p> <p>20 There you go, sir.</p> <p>21 (McKesson-Hilliard Exhibit 4</p> <p>22 was marked for identification.)</p> <p>23 QUESTIONS BY MR. BOGLE:</p> <p>24 Q. Okay. And just to generally</p> <p>25 orient ourselves here, Mr. Hilliard, you see</p>	<p style="text-align: right;">Page 81</p> <p>1 Do you see that?</p> <p>2 A. Yes, I see that.</p> <p>3 Q. And then after that, it says:</p> <p>4 Mr. Mapes -- who is with the DEA, right?</p> <p>5 A. That's correct.</p> <p>6 Q. -- opened the meeting by</p> <p>7 presenting to the representatives of McKesson</p> <p>8 Corp. a PowerPoint briefing which explained</p> <p>9 the common characteristics of Internet</p> <p>10 pharmacies and why their activities are</p> <p>11 illegal.</p> <p>12 Do you see that?</p> <p>13 A. Yes, I see that.</p> <p>14 Q. And then skipping on down to</p> <p>15 the next full paragraph where it says, "After</p> <p>16 the presentation."</p> <p>17 Do you see where I'm at there?</p> <p>18 A. Yes, I do.</p> <p>19 Q. Okay. It says: After the</p> <p>20 presentation, Mr. Mapes presented to</p> <p>21 representatives of McKesson Corp. specific</p> <p>22 customers of McKesson Corp., who have ordered</p> <p>23 substantial quantities of hydrocodone</p> <p>24 products. These specific customers of</p> <p>25 McKesson Corp. were: And then it lists</p>

<p style="text-align: right;">Page 82</p> <p>1 United Prescription Services and Ninth Avenue 2 Pharmacy. 3 Do you see that? 4 A. Yes, I see that. 5 Q. And so as this letter 6 indicates, those were two pharmacies that 7 were called out and discussed during this 8 meeting, right? 9 A. Yes, that's correct. 10 Q. Okay. Then it continues: 11 Mr. Mapes finalized the presentation by 12 advising the representatives of McKesson 13 Corp. that they needed to thoroughly review 14 the materials which had been presented to 15 them and review in depth the purchasing 16 patterns and quantities of their customers. 17 Representatives of McKesson Corp. 18 acknowledged understanding of the material 19 presented. 20 Do you see that? 21 A. Yes, I see that. 22 Q. Okay. Do you recall you and 23 your colleagues present at the meeting 24 acknowledging understanding of the materials 25 that were presented here?</p>	<p style="text-align: right;">Page 84</p> <p>1 document, .3, you see there the first slide 2 is "Internet Pharmacy Data, Meeting with 3 McKesson Corporation, DEA Headquarters, 4 September 1, 2005." 5 Do you see that? 6 A. Yes, I see that. 7 Q. Okay. And then if you go to 8 page .4, there's a slide that says "Issues to 9 Consider." 10 Do you see where I'm at? 11 A. Yes, I do. 12 Q. Okay. The first bullet point 13 says "Frequency of Orders." The second 14 bullet point says "size of Orders." The 15 third bullet point says "Range of Products 16 Purchased." The fourth bullet point says 17 "Payment Method." The fifth says "Pharmacy 18 Location." The sixth says "% Controlled vs. 19 % Noncontrolled." And the last says 20 "Customer pick up at distributor." 21 Do you see that? 22 A. Yes, I see that. 23 Q. Okay. So these were issues 24 that DEA was telling you to consider when 25 trying to determine whether potential</p>
<p style="text-align: right;">Page 83</p> <p>1 MR. EPPICH: Object to the 2 form. 3 A. I don't -- I don't recall 4 specifically what we agreed to at that 5 meeting. 6 QUESTIONS BY MR. BOGLE: 7 Q. Okay. Do you recall leaving 8 this meeting personally feeling that you 9 didn't understand what was presented to you? 10 A. I recall getting a new 11 understanding for the trend of internet 12 pharmacies based on the presentation they 13 provided. 14 Q. Okay. You said "new 15 understanding of the trend with internet 16 pharmacies." Is internet pharmacy something 17 that was on McKesson's radar from a 18 regulatory perspective prior to this meeting? 19 MR. EPPICH: Object to the 20 form. 21 A. Not that I recall. 22 QUESTIONS BY MR. BOGLE: 23 Q. Okay. I want to look at a 24 couple of slides in the presentation. So if 25 you go first to the third page of the</p>	<p style="text-align: right;">Page 85</p> <p>1 diversion was occurring at these internet 2 pharmacies, right? 3 MR. EPPICH: Object to the 4 form. 5 A. I don't recall the exact 6 contents of this slide. 7 QUESTIONS BY MR. BOGLE: 8 Q. Okay. Well, let me ask you 9 this. These issues to consider, were there 10 any of these issues that McKesson was not 11 able to evaluate when selling a product to a 12 customer at that point in time? 13 MR. EPPICH: Object to the 14 form. 15 A. These were areas that would be 16 looked at and considered for potential for 17 suspicious orders. I don't recall the 18 percent versus non-percent controlled 19 substance aspect of it at that point in time. 20 But certainly things like 21 payment methods, if someone is trying to 22 offer you cash and such, you know, that's not 23 something that's acceptable. 24 QUESTIONS BY MR. BOGLE: 25 Q. Okay. So specifically, though,</p>

1 the percentage of controlled versus
2 percentage of noncontrolled, McKesson had a
3 report that it could run as of 2005 that
4 would give that information regarding any
5 sales of any prescription products, right?

6 MR. EPPICH: Object to the
7 form. Assumes facts not in evidence.

8 A. I don't recall when the
9 reporting capabilities were available.

10 QUESTIONS BY MR. BOGLE:

11 Q. Okay. Are you familiar with
12 the term I think used internally was the
13 Volakos report?

14 A. Yes.

15 Q. And that's what this report
16 would be, the percentage of controlled versus
17 noncontrolled, right?

18 MR. EPPICH: Object to the
19 form.

20 A. I don't recall what that
21 report -- it had different elements to it,
22 different reporting capabilities. I don't
23 recall what those capabilities were and I
24 don't recall the exact time frame when that
25 started being used.

1 QUESTIONS BY MR. BOGLE:

2 Q. Okay. Is there any reason, to
3 your understanding, in 2005, why McKesson
4 could not look at the percentage of
5 controlled versus noncontrolled substances
6 that it sold to any of its customers?

7 MR. EPPICH: Object to the
8 form.

9 A. That capability may have been
10 there. I just don't recall, you know, how --
11 when it was there or how it was used.

12 QUESTIONS BY MR. BOGLE:

13 Q. Okay. Well, let me ask you
14 this way: During 2005, McKesson certainly
15 could run a report showing what controlled
16 substances it had sold to a customer, right?

17 A. Correct.

18 Q. Track the transactions, right?

19 A. Correct.

20 Q. Okay. It could also run a
21 report showing the noncontrolled substances
22 it sold to any customer, right?

23 A. Correct.

24 Q. Okay. Because it tracked those
25 transactions as well, right?

1 A. Correct.

2 Q. Okay. In 2005, what mechanism
3 did McKesson utilize to evaluate the
4 frequency of the order -- controlled
5 substances orders to determine whether they
6 were suspicious?

7 MR. EPPICH: Object to the
8 form.

9 A. I don't recall how frequency
10 was determined.

11 QUESTIONS BY MR. BOGLE:

12 Q. Okay. Are you aware -- let's
13 just say from 1998 to 2007 -- of any reports
14 that were run examining frequency of orders
15 for controlled substances at McKesson?

16 MR. EPPICH: Object to the
17 form.

18 A. The DU45 suspicious order
19 report ran nightly and monthly, provided to
20 the DEA. I don't recall that it had -- it
21 showed from day to day the transactions that
22 occurred, the sales that occurred.

23 As far as a "frequency" aspect
24 of it, I don't know how that would have
25 frequency to it, so I'm not sure.

1 QUESTIONS BY MR. BOGLE:

2 Q. Okay. Well, the DU45 report --
3 and we'll talk about this a little more
4 later -- but the DU45 report was a volume
5 report meaning that a customer for a
6 controlled substance didn't appear on that
7 report until they ordered three times the
8 monthly average for that controlled
9 substance, right?

10 MR. EPPICH: Object to the
11 form.

12 A. That's correct.

13 QUESTIONS BY MR. BOGLE:

14 Q. So that's more of a volume
15 report, right? When you reach a certain
16 volume, you get on that report.

17 MR. EPPICH: Object to the
18 form.

19 QUESTIONS BY MR. BOGLE:

20 Q. True?

21 A. Once you exceed a certain
22 threshold under the three-time factor, then
23 you'll show up on that report.

24 Q. Right. And so the DU45
25 specifically didn't have any mechanism to it

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1 that pulled an order on to it as being on the
2 report strictly based on frequency alone, did
3 it?

4 MR. EPPICH: Object to the
5 form.

6 A. I don't recall a frequency
7 basis.

8 QUESTIONS BY MR. BOGLE:

9 Q. Okay. All right. Let's go to
10 page .9 of the PowerPoint.

11 The bottom slide there is
12 titled Suspicious Orders.

13 Do you see that?

14 A. I see that.

15 Q. Okay. The first bullet point
16 lists the C.F.R. The second bullet point
17 says: Requires that registrants design and
18 operate system to identify suspicious orders.

19 Do you see that?

20 A. Yes, I see that.

21 Q. And the last bullet point says:
22 Report suspicious orders to DEA when
23 discovered.

24 Right?

25 A. Yes, I see that.

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1 Q. Okay. And you knew in 2005
2 that that was part of McKesson's obligations
3 were to report suspicious orders of
4 controlled substances when they were -- to
5 the DEA when they were discovered, right?

6 MR. EPPICH: Object to the
7 form. Calls for a legal conclusion.

8 A. We provided the suspicious
9 order reports to the DEA, again, nightly as
10 well as monthly, so that they had the report
11 for their review.

12 MR. BOGLE: Okay. Move to
13 strike as nonresponsive.

14 QUESTIONS BY MR. BOGLE:

15 Q. My question simply was: You
16 understood at this point in 2005, by
17 September 2005, that there was an obligation
18 for McKesson to report suspicious orders to
19 the DEA when they were discovered. True?

20 MR. EPPICH: Object to the
21 form. Foundation.

22 A. McKesson did report suspicious
23 orders to the DEA.

24 QUESTIONS BY MR. BOGLE:

25 Q. Okay.

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1 MR. BOGLE: Move to strike as
2 nonresponsive.

3 QUESTIONS BY MR. BOGLE:

4 Q. My question was simply: You
5 did have an understanding as of 2005 that
6 there was an obligation for McKesson to
7 report suspicious orders to the DEA when they
8 were discovered. True?

9 MR. EPPICH: Object to the
10 form; calls for a legal conclusion,
11 asked and answered.

12 A. We submitted the reports to the
13 DEA for the controlled substance suspicious
14 order reports.

15 QUESTIONS BY MR. BOGLE:

16 Q. Okay. And why would you do
17 that, then?

18 A. That was the agreed reporting
19 mechanism for the suspicious order that was
20 created from the Suspicious Order Task Force
21 that DEA had agreed was the methodology.

22 Q. What time period are you
23 referring to?

24 A. Approximately '95.

25 Q. Okay. So before you were with

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1 the company.

2 A. That's correct.

3 Q. Okay. So you were not a member
4 of any such task force, right?

5 A. That's correct.

6 Q. Okay. And so anything that you
7 would know about the task force came to you
8 from somebody other than yourself, right?

9 You don't have any firsthand knowledge of
10 that.

11 MR. EPPICH: Object to the
12 form.

13 QUESTIONS BY MR. BOGLE:

14 Q. True?

15 A. I was not there.

16 Q. Right. So you don't have any
17 firsthand knowledge of it, true?

18 MR. EPPICH: Object to the
19 form.

20 A. I was not at the meeting.

21 QUESTIONS BY MR. BOGLE:

22 Q. Okay. So therefore you could
23 not have any firsthand knowledge, right?

24 MR. EPPICH: Object to the
25 form.

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1 A. I was not -- I did not attend
 2 the meeting of the task force.
 3 QUESTIONS BY MR. BOGLE:
 4 Q. Okay. Do you know of anyone
 5 from McKesson that did?
 6 A. I don't recall.
 7 Q. Okay. Did you keep any written
 8 documentation from the DEA that would have
 9 come from this task force you're referencing
 10 that says, you know, the DEA -- this is our
 11 stamp of approval that this is the mechanism
 12 that we approved to report suspicious orders?
 13 MR. EPPICH: Objection --
 14 QUESTIONS BY MR. BOGLE:
 15 Q. Did you keep a file like that?
 16 MR. EPPICH: Object to the
 17 form.
 18 A. I don't recall if there was a
 19 form associated with the outcome of that
 20 meeting.
 21 QUESTIONS BY MR. BOGLE:
 22 Q. Okay. I'm just asking if you
 23 had any sort of documentation that you kept
 24 for yourself to make sure that you felt
 25 comfortable that that was the proper

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1 reporting mechanism.
 2 MR. EPPICH: Object to the
 3 form. Vague.
 4 A. Through my career, whenever I
 5 had information from the DEA, then I would
 6 maintain copies of it.
 7 QUESTIONS BY MR. BOGLE:
 8 Q. Okay. So if you had any
 9 correspondence from the DEA that said that
 10 this was a reporting mechanism they signed
 11 off on, you would have kept that, right?
 12 MR. EPPICH: Object to the
 13 form.
 14 A. I wasn't at the meeting, so I
 15 don't have -- I didn't have any documentation
 16 on that, I don't recall having documentation
 17 on that.
 18 But as I said, throughout the
 19 course of my career, if I did receive some
 20 type of letter, like an extension to DEA
 21 registrations, then we would maintain that
 22 letter.
 23 QUESTIONS BY MR. BOGLE:
 24 Q. So let's go to page .10 then.
 25 There's another slide on suspicious orders at

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1 the top there.
 2 Do you see that?
 3 A. I see that.
 4 Q. That bullet point says:
 5 Reporting a suspicious order to DEA does
 6 NOT -- and "not" is in all caps -- relieve
 7 the distributor of the responsibility to
 8 maintain effective controls against
 9 diversion.
 10 Do you see that?
 11 A. I see that.
 12 Q. What did you understand that to
 13 mean when that was presented to you in 2005?
 14 A. We had other controls around
 15 ensuring -- to prevent against diversion, and
 16 so we had to ensure that we had other
 17 controls, you know, that kept a controlled
 18 substance within the legitimate registration.
 19 Q. When you say "other controls,"
 20 you're talking about other controls other
 21 than just reporting the suspicious order,
 22 right?
 23 A. Correct.
 24 Q. Okay. What were those controls
 25 in 2005?

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1 A. We only serviced DEA-registered
 2 facilities and also state-licensed
 3 facilities. Some states required a
 4 controlled substance license, so there was
 5 license validation checks that would take
 6 place. Also D&B creditworthiness aspects for
 7 them.
 8 We also had delivery systems
 9 that -- couriers that delivered only to these
 10 registered locations. We supplied ARCOS
 11 records to the DEA monthly on all of our
 12 transactions so that DEA had that as well.
 13 We reported loss and thefts, as required.
 14 We had security vaults and
 15 cages within our facilities to comply with
 16 the security requirements for protecting the
 17 controlled substances; numerous paperwork
 18 requirements, including the 222 forms for the
 19 transactions for Schedule IIs. There were
 20 many different other controls.
 21 Q. Those controls in 2005 would
 22 not have included blocking orders as we
 23 talked about before, right?
 24 MR. EPPICH: Object to the
 25 form.

<p style="text-align: right;">Page 98</p> <p>1 QUESTIONS BY MR. BOGLE:</p> <p>2 Q. Blocking suspicious orders.</p> <p>3 MR. EPPICH: Object to the</p> <p>4 form.</p> <p>5 A. Blocking suspicious orders took</p> <p>6 place in the CSMP program.</p> <p>7 QUESTIONS BY MR. BOGLE:</p> <p>8 Q. Right. So in 2005, that would</p> <p>9 not have been in place, right?</p> <p>10 A. That was not in place in 2005.</p> <p>11 Q. All right. The second slide</p> <p>12 here on that page, the second bullet point</p> <p>13 says: Distributor must determine which</p> <p>14 orders are suspicious and make a sales</p> <p>15 decision.</p> <p>16 Do you see that?</p> <p>17 A. I see that.</p> <p>18 Q. Okay. Okay. Let's go to</p> <p>19 page .14. You see there's a summary slide</p> <p>20 there at the bottom, and the last bullet</p> <p>21 point says: Not limited to Internet</p> <p>22 pharmacies.</p> <p>23 Do you see that?</p> <p>24 A. Yes, I see that.</p> <p>25 Q. Okay. So you understood that</p>	<p style="text-align: right;">Page 100</p> <p>1 and they were going to going to continue to</p> <p>2 help us to identify pharmacies that we needed</p> <p>3 to investigate, and the internet pharmacy</p> <p>4 aspect of it for me was a really emerging</p> <p>5 trend and something that we had to go back</p> <p>6 and take a look at.</p> <p>7 QUESTIONS BY MR. BOGLE:</p> <p>8 Q. You would agree with me that</p> <p>9 the primary responsibility for investigating</p> <p>10 suspicious orders or suspicious customers or</p> <p>11 suspicious activity for a customer falls on</p> <p>12 McKesson, right? For any product it's</p> <p>13 selling.</p> <p>14 MR. EPPICH: Object to the</p> <p>15 form; foundation. Calls for a legal</p> <p>16 conclusion.</p> <p>17 A. Okay. Restate the question.</p> <p>18 QUESTIONS BY MR. BOGLE:</p> <p>19 Q. Sure.</p> <p>20 You would agree the primary</p> <p>21 responsibility for investigating suspicious</p> <p>22 orders or suspicious activity of a customer</p> <p>23 of McKesson's falls primarily on McKesson,</p> <p>24 right?</p> <p>25 MR. EPPICH: Object to the</p>
<p style="text-align: right;">Page 99</p> <p>1 this presentation that was provided to you</p> <p>2 and the information conveyed to you, from the</p> <p>3 DEA's perspective, at least, was not limited</p> <p>4 to just internet pharmacies, right?</p> <p>5 MR. EPPICH: Object to the</p> <p>6 form.</p> <p>7 QUESTIONS BY MR. BOGLE:</p> <p>8 Q. They're providing you guidance</p> <p>9 beyond just for internet pharmacies, true?</p> <p>10 MR. EPPICH: Object to the</p> <p>11 form. Calls for speculation.</p> <p>12 A. I don't recall what all was</p> <p>13 said and portrayed through this presentation.</p> <p>14 QUESTIONS BY MR. BOGLE:</p> <p>15 Q. Okay. Did you walk away from</p> <p>16 the presentation believing that the things</p> <p>17 the DEA told you in this PowerPoint</p> <p>18 presentation just pertained to internet</p> <p>19 pharmacies?</p> <p>20 MR. EPPICH: Object to the</p> <p>21 form.</p> <p>22 A. My personal opinion, I walked</p> <p>23 away with the belief that we had a</p> <p>24 collaborative working arrangement here, that</p> <p>25 they were helping us to identify pharmacies</p>	<p style="text-align: right;">Page 101</p> <p>1 form. Foundation. Calls for a legal</p> <p>2 conclusion.</p> <p>3 A. I'm not sure.</p> <p>4 QUESTIONS BY MR. BOGLE:</p> <p>5 Q. Okay. Is that not the way that</p> <p>6 you performed your job, with that sort of</p> <p>7 belief in mind?</p> <p>8 MR. EPPICH: Object to the</p> <p>9 form. Foundation. Calls for a legal</p> <p>10 conclusion.</p> <p>11 A. I don't know.</p> <p>12 QUESTIONS BY MR. BOGLE:</p> <p>13 Q. You don't know? Okay.</p> <p>14 So when you came in to work</p> <p>15 every day as director of regulatory affairs,</p> <p>16 would you or would you not have the mindset</p> <p>17 that the primary responsibility to make sure</p> <p>18 that we're not putting out suspicious orders</p> <p>19 of controlled substances falls on us as</p> <p>20 McKesson?</p> <p>21 MR. EPPICH: Object to the</p> <p>22 form.</p> <p>23 A. DC management teams managed the</p> <p>24 controlled substance aspect and their</p> <p>25 customers along with themselves. I would be</p>

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1 brought in whenever we had issues that we
 2 needed to discuss.
 3 QUESTIONS BY MR. BOGLE:
 4 Q. Yeah, I guess I'm asking the
 5 question a little differently than that,
 6 though. What I'm asking is: When you came
 7 to work every day from 1997 to 2016 and were
 8 director of regulatory affairs at McKesson,
 9 with what you've said is an important job,
 10 did you take that job to mean that the
 11 primary responsibility for making sure that
 12 suspicious orders didn't go out to customers
 13 fell on McKesson as opposed to somebody else?
 14 MR. EPPICH: Object to the form
 15 to the extent it calls for a legal
 16 conclusion.
 17 A. I don't recall what I thought
 18 when I walked into the office each day.
 19 QUESTIONS BY MR. BOGLE:
 20 Q. Okay. Do you ever recall a day
 21 at work where you sat down and said, "I've
 22 got to make sure, as director of regulatory
 23 affairs, that suspicious orders do not go to
 24 customers from McKesson when it comes to
 25 controlled substances"?

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1 MR. EPPICH: Object to the
 2 form.
 3 A. I don't recall what I thought
 4 when I sat down each day.
 5 QUESTIONS BY MR. BOGLE:
 6 Q. Okay. Any day, that thought
 7 cross your mind that you can think of?
 8 MR. EPPICH: Object to the
 9 form; asked and answered.
 10 A. Not from 10 years ago.
 11 QUESTIONS BY MR. BOGLE:
 12 Q. What about from two years ago?
 13 A. I wasn't involved in the DRA
 14 CSMP process at that point in time.
 15 Q. What about five years ago?
 16 MR. EPPICH: Same objections.
 17 Asked and answered.
 18 A. I don't recall.
 19 QUESTIONS BY MR. BOGLE:
 20 Q. All right. We'll look at
 21 page .15 here on this as well. Another
 22 summary slide at the top says: A pattern of
 23 drugs being distributed to pharmacies who are
 24 diverting controlled substances demonstrates
 25 the lack of effective controls against

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1 diversion by the distributor.
 2 Do you see that?
 3 A. Yes, I see that.
 4 MR. BOGLE: If we can put it on
 5 mute on the phone, somebody's got some
 6 background noise.
 7 QUESTIONS BY MR. BOGLE:
 8 Q. The second summary slide there,
 9 the first bullet point says: Any distributor
 10 who is selling controlled substances that are
 11 being dispensed outside the course of
 12 professional practice must stop immediately.
 13 Do you see that?
 14 A. Yes, I see that.
 15 Q. Okay. And that specific
 16 statement there, did you personally take that
 17 statement seriously when you received it from
 18 DEA?
 19 MR. EPPICH: Object to the
 20 form.
 21 A. I don't recall what was thought
 22 at that point in time.
 23 QUESTIONS BY MR. BOGLE:
 24 Q. Okay. Well, as a course of
 25 common practice for you at that point in time

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1 in 2005, when the DEA says something like
 2 "Any distributor who is selling controlled
 3 substances that are being dispensed outside
 4 the course of professional practice must stop
 5 immediately," would it be your common
 6 practice to take a statement like that
 7 seriously?
 8 MR. EPPICH: Object to the
 9 form. Asked and answered.
 10 A. We complied with the CSA
 11 requirements for DEA.
 12 MR. BOGLE: Move to strike as
 13 nonresponsive.
 14 QUESTIONS BY MR. BOGLE:
 15 Q. My question was, that statement
 16 there that I just read for you twice, would
 17 it be your common practice in 2005 when you
 18 received that statement to take that
 19 statement seriously --
 20 MR. EPPICH: Object to the
 21 form.
 22 QUESTIONS BY MR. BOGLE:
 23 Q. -- as Gary Hilliard --
 24 MR. EPPICH: Object to the
 25 form; asked and answered.

<p style="text-align: right;">Page 106</p> <p>1 QUESTIONS BY MR. BOGLE:</p> <p>2 Q. -- director of regulatory</p> <p>3 affairs at McKesson?</p> <p>4 MR. EPPICH: Same objections.</p> <p>5 A. I don't know.</p> <p>6 QUESTIONS BY MR. BOGLE:</p> <p>7 Q. Don't know, okay.</p> <p>8 During this presentation in</p> <p>9 September 2005 that you were present for, was</p> <p>10 there anything about that presentation that</p> <p>11 you thought was unclear as far as what the</p> <p>12 DEA was asking of you guys?</p> <p>13 MR. EPPICH: Object to the</p> <p>14 form.</p> <p>15 A. Not that I recall.</p> <p>16 QUESTIONS BY MR. BOGLE:</p> <p>17 Q. Okay. But you do recall a</p> <p>18 meeting just a couple months thereafter where</p> <p>19 the DEA made pretty clear that they felt you</p> <p>20 didn't take them very seriously in that</p> <p>21 meeting, right?</p> <p>22 MR. EPPICH: Object to the</p> <p>23 form.</p> <p>24 A. We did attend a meeting a</p> <p>25 couple of months thereafter for which</p>	<p style="text-align: right;">Page 108</p> <p>1 attendees, but I just want to confirm you see</p> <p>2 your name there as being one of the</p> <p>3 attendees, right?</p> <p>4 A. That's correct.</p> <p>5 Q. And that's true, right, you</p> <p>6 attended this meeting?</p> <p>7 A. That is correct.</p> <p>8 Q. Okay. And looking down on this</p> <p>9 page about three-quarters of the way down,</p> <p>10 you see where it says, "Mr. Mapes opened"?</p> <p>11 A. Yes, I do.</p> <p>12 Q. It says: Mr. Mapes opened the</p> <p>13 meeting by making introductions and covering</p> <p>14 the background of previous meetings and</p> <p>15 telephonic conversations between OD and</p> <p>16 McKesson Corp. Specifically addressed were</p> <p>17 the following:</p> <p>18 And the first bullet says: A</p> <p>19 meeting between McKesson Corp. and E-Commerce</p> <p>20 Section was held September 1, 2005, at which</p> <p>21 time McKesson Corp. was given a full detailed</p> <p>22 briefing of the OD's Distributors Initiative</p> <p>23 to address the Internet pharmacy problem.</p> <p>24 Do you see that?</p> <p>25 A. Yes, I see that.</p>
<p style="text-align: right;">Page 107</p> <p>1 Rannazzisi came in and wanted to do a</p> <p>2 show-cause.</p> <p>3 QUESTIONS BY MR. BOGLE:</p> <p>4 Q. Right. Because he felt you</p> <p>5 weren't taking them very seriously, right?</p> <p>6 MR. EPPICH: Object to the</p> <p>7 form. Calls for speculation.</p> <p>8 A. I don't know what the</p> <p>9 perception was.</p> <p>10 QUESTIONS BY MR. BOGLE:</p> <p>11 Q. Okay. I'm going to hand you</p> <p>12 what I'm marking as Exhibit 5, which is</p> <p>13 1.1789, and that's MCKMDL00496876.</p> <p>14 (McKesson-Hilliard Exhibit 5</p> <p>15 was marked for identification.)</p> <p>16 QUESTIONS BY MR. BOGLE:</p> <p>17 Q. Okay. Looking at Exhibit 5</p> <p>18 here, this is another memorandum, the subject</p> <p>19 being a Meeting Between the Office of</p> <p>20 Diversion Control and McKesson Corp. on</p> <p>21 January 3, 2006.</p> <p>22 Do you see that?</p> <p>23 A. Yes, I see that.</p> <p>24 Q. Okay. And the second</p> <p>25 paragraph, I'm not going to read off all the</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. And that September 1 meeting in</p> <p>2 2005 was the one we just were talking about,</p> <p>3 right?</p> <p>4 A. That's correct.</p> <p>5 Q. Okay. The second-to-last</p> <p>6 bullet point on this page said: Pharmacies</p> <p>7 of particular concern were located in</p> <p>8 Florida, Texas, and Colorado.</p> <p>9 Do you see that?</p> <p>10 A. Yes, I see that.</p> <p>11 Q. And that's again referring back</p> <p>12 to the discussion that was had back in</p> <p>13 September 1, '05, right?</p> <p>14 MR. EPPICH: Object to the</p> <p>15 form; foundation.</p> <p>16 A. No. The notifications occurred</p> <p>17 after that meeting.</p> <p>18 QUESTIONS BY MR. BOGLE:</p> <p>19 Q. Okay. Does this letter</p> <p>20 indicate that there's any other date and time</p> <p>21 when that occurred? It was all after the</p> <p>22 discussion starting on September 1, 2005,</p> <p>23 right?</p> <p>24 MR. EPPICH: Object to the</p> <p>25 form.</p>

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1 A. I don't recall the other states
 2 other than what was listed in the other
 3 letter.
 4 QUESTIONS BY MR. BOGLE:
 5 Q. Okay. Well, we looked at
 6 Exhibit 4 a minute ago. One of the
 7 pharmacies listed there was United
 8 Prescription Services.
 9 You recall that?
 10 A. Yes.
 11 Q. You know that's a Florida
 12 pharmacy, right?
 13 MR. EPPICH: Object to the
 14 form. Calls for speculation.
 15 A. That's my recollection.
 16 QUESTIONS BY MR. BOGLE:
 17 Q. Okay. We'll look at it in a
 18 minute. I mean, if you don't know, I can
 19 show you.
 20 The next bullet point actually
 21 says: Specifically addressed concerns with
 22 United Prescription Services, a current
 23 customer of McKesson's.
 24 Do you see that?
 25 A. Yes, I see that.

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1 Q. And we do know that was covered
 2 in the September 1, 2005 meeting, right?
 3 A. Agreed.
 4 Q. Their concerns about that
 5 pharmacy?
 6 A. Agreed.
 7 Q. Okay. It continues: On
 8 October 6, 2005, Mr. Mapes called Mr. Gilbert
 9 to discuss comments the E-Commerce Section
 10 had received that McKesson Corp. was not
 11 taking the Internet pharmacy problem
 12 seriously. Mr. Mapes was assured by
 13 Mr. Gilbert that McKesson Corp. was taking
 14 the matters seriously and working to change
 15 their procedures.
 16 Do you see that?
 17 A. Yes, I see that.
 18 Q. Who is Mr. Gilbert?
 19 A. Outside counsel.
 20 Q. So he's you guys' lawyer,
 21 right?
 22 A. Correct.
 23 Q. Okay. And that's on October
 24 5th.
 25 And the next entry is on

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1 October 10. It says: On October 10, 2005, a
 2 DEA investigator from the Tampa District
 3 Office contacted Bill Mahoney at the McKesson
 4 Distribution Center in Lakeland, Florida, and
 5 expressed concerns of hydrocodone sales to
 6 United Prescription Services.
 7 Do you see that?
 8 A. I see that.
 9 Q. Okay. Then the next entry
 10 says: The E-Commerce Section retrieved ARCOS
 11 data which revealed that between October 10
 12 and October 21, 2005, the following alleged
 13 Internet pharmacies received the identified
 14 quantities of hydrocodone.
 15 And then there's one, two,
 16 three, four, five, six pharmacies listed,
 17 right?
 18 A. Yes, that's what's listed here.
 19 Q. Okay. And for this 11-day
 20 period, it's noted in this letter that United
 21 Prescription Services received 252,100 dosage
 22 units of hydrocodone from McKesson, right?
 23 MR. EPPICH: Object to the
 24 form. Foundation.
 25 A. That's what's stated on the

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1 document.
 2 QUESTIONS BY MR. BOGLE:
 3 Q. Okay. And that Universal Rx
 4 received 254,700 dosage units during this
 5 11-day period from McKesson of hydrocodone,
 6 right? That's what the letter states.
 7 MR. EPPICH: Object to the form
 8 and foundation.
 9 A. That's listed on this letter,
 10 yes.
 11 QUESTIONS BY MR. BOGLE:
 12 Q. Okay. And that Bi-Wise
 13 Pharmacy received 158,400 dosage units of
 14 hydrocodone during this 11-day period, from
 15 McKesson, right?
 16 MR. EPPICH: Object to the
 17 form; foundation.
 18 QUESTIONS BY MR. BOGLE:
 19 Q. That's what the letter states.
 20 A. That's what the letter states.
 21 Q. The letter also states that
 22 Avee Pharmacy received 220,200 dosage units
 23 of hydrocodone from McKesson in this 11-day
 24 period, right?
 25 MR. EPPICH: Object to the

<p style="text-align: right;">Page 114</p> <p>1 form; foundation.</p> <p>2 QUESTIONS BY MR. BOGLE:</p> <p>3 Q. That's what the letter states.</p> <p>4 A. That's what the letter states.</p> <p>5 Q. The letter also states that</p> <p>6 Medipharma Rx received 500,900 dosage units of</p> <p>7 hydrocodone in 11 days from McKesson, right?</p> <p>8 MR. EPPICH: Object to the</p> <p>9 form; foundation.</p> <p>10 A. That's what the letter states.</p> <p>11 QUESTIONS BY MR. BOGLE:</p> <p>12 Q. And finally, Accumed Pharmacy</p> <p>13 received 404,400 dosage units of hydrocodone</p> <p>14 from McKesson in 11 days, right?</p> <p>15 MR. EPPICH: Object to the form</p> <p>16 and foundation.</p> <p>17 A. That's what the letter states.</p> <p>18 QUESTIONS BY MR. BOGLE:</p> <p>19 Q. It continues thereafter and</p> <p>20 says: Mr. Rannazzisi then addressed the</p> <p>21 representatives of McKesson Corp. and</p> <p>22 informed them that it was his concerted</p> <p>23 opinion based on the information presented,</p> <p>24 the DEA needed to ask for the surrender of</p> <p>25 McKesson's Lakeland Distribution Center</p>	<p style="text-align: right;">Page 116</p> <p>1 their own admission, was unable to provide a</p> <p>2 plausible explanation for the sale of over</p> <p>3 2 million dosage units of hydrocodone in a</p> <p>4 21-day period to pharmacies previously</p> <p>5 identified by DEA to McKesson Corp.</p> <p>6 Do you see that?</p> <p>7 A. Yes, I see that.</p> <p>8 Q. Okay. And then the last</p> <p>9 paragraph on the bottom of this page</p> <p>10 references you and says: After the</p> <p>11 conclusion of this meeting, it was learned</p> <p>12 from Gary Hilliard of McKesson Corp. that one</p> <p>13 of the reasons they were not able to realize</p> <p>14 the full volume of hydrocodone product going</p> <p>15 out to the Florida pharmacies was that their</p> <p>16 reports only included the name brand</p> <p>17 hydrocodone products distributed and was</p> <p>18 not -- and was leaving out the generic</p> <p>19 products. It was only after realizing that</p> <p>20 the generic were not being reported was</p> <p>21 McKesson Corp. then able to see the large</p> <p>22 quantities that DEA was bringing to</p> <p>23 McKesson's attention.</p> <p>24 Do you see that?</p> <p>25 A. Yes, I see that.</p>
<p style="text-align: right;">Page 115</p> <p>1 registration or DEA would pursue an Order to</p> <p>2 Show Cause against the DEA registration of</p> <p>3 the McKesson facility in Lakeland, Florida.</p> <p>4 Do you see that?</p> <p>5 A. Yes, I see that.</p> <p>6 Q. So having a DEA registration</p> <p>7 surrendered or having an Order to Show Cause</p> <p>8 brought against a distribution center, those</p> <p>9 are serious enforcement actions, right?</p> <p>10 MR. EPPICH: Object to the</p> <p>11 form.</p> <p>12 A. They are serious.</p> <p>13 QUESTIONS BY MR. BOGLE:</p> <p>14 Q. Okay. And in fact, the DEA did</p> <p>15 file for an Order to Show Cause against</p> <p>16 Lakeland after this point in time, right?</p> <p>17 A. Yes, they did.</p> <p>18 Q. Okay. Continuing on down in</p> <p>19 this letter, I'm skipping that paragraph and</p> <p>20 going to the next one that says, "Through the</p> <p>21 course of the above."</p> <p>22 Do you see that?</p> <p>23 A. Yes, I see that.</p> <p>24 Q. It says: Through the course of</p> <p>25 the above discussion, McKesson Corp., by</p>	<p style="text-align: right;">Page 117</p> <p>1 Q. Okay. And you recall making</p> <p>2 that statement to somebody at the DEA that</p> <p>3 after the meeting, you recognized that the</p> <p>4 reports you guys ran to track controlled</p> <p>5 substances purchases like this weren't</p> <p>6 picking up the generic products?</p> <p>7 MR. EPPICH: Object to the</p> <p>8 form.</p> <p>9 A. That's my recollection.</p> <p>10 QUESTIONS BY MR. BOGLE:</p> <p>11 Q. That is your recollection?</p> <p>12 Okay.</p> <p>13 And what sort of report were</p> <p>14 you referring to?</p> <p>15 A. I don't recall the report, but</p> <p>16 it was based on item number or SKU number, so</p> <p>17 the identification of the items left out the</p> <p>18 generic items because it was in error.</p> <p>19 Q. Okay. So was the report for</p> <p>20 these pharmacies in Florida run any</p> <p>21 differently than the reports for any other</p> <p>22 pharmacies around the country in tracking</p> <p>23 hydrocodone purchases?</p> <p>24 MR. EPPICH: Object to the</p> <p>25 form. Calls for speculation.</p>

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1 A. I don't recall.
 2 QUESTIONS BY MR. BOGLE:
 3 Q. You were responsible for the
 4 reports at that time, right?
 5 MR. EPPICH: Object to the
 6 form.
 7 A. No, I did not generate the
 8 reports. Again, the DC manager would have
 9 these reports and it would be utilized -- Don
 10 Walker may have looked at them at that point
 11 in time. I just don't really know.
 12 QUESTIONS BY MR. BOGLE:
 13 Q. But you were asked to
 14 investigate the specific issue that we just
 15 read here, right, for these pharmacies?
 16 MR. EPPICH: Object to the
 17 form. Calls for speculation.
 18 A. I don't recall what the
 19 specific actions I was directed to take, but
 20 we realized that the reporting had an error
 21 in it and that's what provided the
 22 information stated above.
 23 QUESTIONS BY MR. BOGLE:
 24 Q. When you looked at the
 25 reporting here, did you confirm that the way

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1 the reporting was done for these six
 2 pharmacies was any different than the
 3 reporting done for any other pharmacies at
 4 that point in time?
 5 MR. EPPICH: Object to the
 6 form.
 7 A. I don't recall.
 8 QUESTIONS BY MR. BOGLE:
 9 Q. Okay. Did you look to see if,
 10 hey, there's something about the reports for
 11 these six pharmacies that's different than
 12 the way we're doing reports for anybody else?
 13 MR. EPPICH: Object to the
 14 form.
 15 A. Again, I don't recall.
 16 QUESTIONS BY MR. BOGLE:
 17 Q. Okay. Would there be any
 18 reason for the reports for these six
 19 pharmacies in this time frame, for controlled
 20 substances monitoring to be done any
 21 differently than any other pharmacies? Is
 22 there anything special about these pharmacies
 23 for why the reports would be different than
 24 any others?
 25 MR. EPPICH: Object to the

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1 form; calls for speculation.
 2 A. I really don't recall.
 3 QUESTIONS BY MR. BOGLE:
 4 Q. Okay. So can you tell our
 5 jury, then, that when you did this
 6 investigation in 2006, that you were able to
 7 confirm in your mind that this was not an
 8 issue with all controlled substance reports
 9 that were being run up to that date and time?
 10 MR. EPPICH: Object to the
 11 form.
 12 A. I don't recall what the
 13 conclusion was. We identified these -- this
 14 error on the reporting and corrected it.
 15 QUESTIONS BY MR. BOGLE:
 16 Q. Okay. So can you specifically
 17 tell our jury and reassure our jury that this
 18 wasn't an issue with all reports being run up
 19 to this point in time tracking controlled
 20 substances?
 21 MR. EPPICH: Object to the
 22 form. Calls for speculation.
 23 A. I really don't recall.
 24 QUESTIONS BY MR. BOGLE:
 25 Q. Okay. But I'm asking, can you

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1 specifically say, "I looked at this and I can
 2 reassure you that this was a one-off issue
 3 and it wasn't a systemic issue for all
 4 controlled substance tracking prior to this
 5 date and time in January 2006"?
 6 MR. EPPICH: Object to the
 7 form; calls for speculation, asked and
 8 answered.
 9 A. I don't recall.
 10 QUESTIONS BY MR. BOGLE:
 11 Q. Okay. I'm just asking if
 12 you -- you say you don't recall. I'm asking
 13 the question differently.
 14 Can you specifically say to our
 15 jury, under oath, that prior to this point in
 16 time when you did this investigation in 2006,
 17 that all reports tracking controlled
 18 substances before that date were done
 19 differently than the reports for these six
 20 pharmacies? Can you make that affirmative
 21 statement? Yes or no?
 22 MR. EPPICH: Object to the
 23 form. Asked and answered. Calls for
 24 speculation.
 25 A. I don't recall.

<p style="text-align: right;">Page 122</p> <p>1 QUESTIONS BY MR. BOGLE:</p> <p>2 Q. You don't recall if you can</p> <p>3 make that statement?</p> <p>4 A. I don't recall.</p> <p>5 Q. I'm asking if you can make that</p> <p>6 statement today, not whether you recall then.</p> <p>7 MR. EPPICH: Same objections.</p> <p>8 QUESTIONS BY MR. BOGLE:</p> <p>9 Q. I don't think you're answering</p> <p>10 my question.</p> <p>11 MR. EPPICH: Same objections.</p> <p>12 A. What I'm answering is, I don't</p> <p>13 recall the reports, the detail of the report</p> <p>14 or how the report was used. I recall that</p> <p>15 there was an issue with the report that it</p> <p>16 didn't contain all the SKU numbers, and</p> <p>17 particularly for the generic items. And when</p> <p>18 we identified that, we corrected it.</p> <p>19 QUESTIONS BY MR. BOGLE:</p> <p>20 Q. Okay. So can you provide any</p> <p>21 specific reassurance that any reports</p> <p>22 generated prior to the date when you did this</p> <p>23 investigation in early 2006 did not suffer</p> <p>24 from the same flaw?</p> <p>25 MR. EPPICH: Object to the</p>	<p style="text-align: right;">Page 124</p> <p>1 was marked for identification.)</p> <p>2 QUESTIONS BY MR. BOGLE:</p> <p>3 Q. Okay, Mr. Hilliard, just to</p> <p>4 generally orient you here, this was produced</p> <p>5 to us by McKesson in this litigation and is a</p> <p>6 listing of all the pleadings for the Order to</p> <p>7 Show Cause proceeding with Lakeland</p> <p>8 Distribution Center. Okay?</p> <p>9 A. Okay.</p> <p>10 Q. All right. We're going to look</p> <p>11 at -- obviously it's several hundred pages.</p> <p>12 I'm not going to go through every page with</p> <p>13 you, I promise, but there's a few aspects</p> <p>14 that I want to talk to you about.</p> <p>15 So if you look, first of all --</p> <p>16 and on this one I'm going to use the Bates</p> <p>17 number at the bottom. Sorry to change it up</p> <p>18 on you but I don't have all the numbers that</p> <p>19 are at the bottom for myself, so I'm at page</p> <p>20 ending 6309.</p> <p>21 A. I see that.</p> <p>22 Q. And you see this is titled</p> <p>23 Order to Show Cause, August 4, 2006, in the</p> <p>24 matter of McKesson Corporation.</p> <p>25 Do you see that?</p>
<p style="text-align: right;">Page 123</p> <p>1 form. Calls for speculation. Asked</p> <p>2 and answered five times.</p> <p>3 A. I don't recall.</p> <p>4 QUESTIONS BY MR. BOGLE:</p> <p>5 Q. Okay. So -- and if you could</p> <p>6 provide such reassurance, you would, right?</p> <p>7 A. That's correct.</p> <p>8 MR. EPPICH: Object to the</p> <p>9 form; foundation, calls for</p> <p>10 speculation.</p> <p>11 QUESTIONS BY MR. BOGLE:</p> <p>12 Q. Okay. I want to talk a little</p> <p>13 bit more about the Order to Show Cause</p> <p>14 proceedings for Lakeland that occurred</p> <p>15 thereafter.</p> <p>16 MR. BOGLE: Let me get my</p> <p>17 copies here, sorry. Slight delay.</p> <p>18 I'm emptying boxes.</p> <p>19 MR. EPPICH: I'm going to stand</p> <p>20 up for this one.</p> <p>21 QUESTIONS BY MR. BOGLE:</p> <p>22 Q. All right. I'm handing you</p> <p>23 what I'm marking as Exhibit 6, which is</p> <p>24 1.1943, MCKMDL00496306.</p> <p>25 (McKesson-Hilliard Exhibit 6</p>	<p style="text-align: right;">Page 125</p> <p>1 A. I see that.</p> <p>2 Q. Okay. Second sentence -- or</p> <p>3 second paragraph there says: Notice is</p> <p>4 hereby given to afford McKesson Drug Company</p> <p>5 of Lakeland, Florida (McKesson-Lakeland), an</p> <p>6 opportunity to Show Cause before the Drug</p> <p>7 Enforcement Administration (DEA) at a place</p> <p>8 and time to be determined, as to why the DEA</p> <p>9 should not revoke its Certificate of</p> <p>10 Registration -- then it lists the number --</p> <p>11 as a distributor of controlled substances,</p> <p>12 and deny any applications for renewal or</p> <p>13 modification of such registration pursuant to</p> <p>14 21 U.S.C. Sections 824(a)(4) and 823(b) and</p> <p>15 (e), for reason that its registration is</p> <p>16 inconsistent with the public interest, as</p> <p>17 that term is used in 21 U.S.C. 823(b) and</p> <p>18 (d), as evidenced by, but not limited to, the</p> <p>19 following.</p> <p>20 And then it proceeds from</p> <p>21 there. Do you see that?</p> <p>22 A. I see that.</p> <p>23 Q. Let's look at the list that</p> <p>24 follows. I want to look at item number 12,</p> <p>25 which is on page ending 6311. Number 12</p>

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1 says: DEA investigators later commenced an
2 analysis of all reported purchases and
3 purchase records of controlled substances to
4 establish percentages of sales for the seven
5 pharmacies. For the month of January 2006,
6 the percentage of sales that were hydrocodone
7 sales for these seven pharmacies were as
8 follows: Accumed-77.7%; Avee-79.7%;
9 Bi-Wise-83.3%; Medipharma-87.6%;
10 Trelles-41.3%; United-90.1%; and
11 Universal-77%.

12 Then they say: These
13 percentages of hydrocodone sales are clearly
14 indicative of a large-scale internet
15 dispensing activity, and are far beyond the
16 hydrocodone sale activities of a true walk-in
17 pharmacy or mail-order pharmacy.

18 Do you see that?

19 A. Yes, I see that.

20 Q. Okay. Just looking at, for
21 example, United with 90.1% of their sales
22 from McKesson to them being for hydrocodone,
23 that's a very high percentage being
24 hydrocodone of the overall sales to that
25 pharmacy, right? We can agree on that.

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1 MR. EPPICH: Object to the
2 form; foundation.

3 A. I don't know what the
4 percentage accuracy should be for a
5 particular pharmacy.

6 QUESTIONS BY MR. BOGLE:

7 Q. Okay. So during your time in
8 20 years as director of regulatory affairs,
9 you can't tell us whether 90.1% of a
10 pharmacy's purchases being hydrocodone are --
11 is a red flag, for example?

12 MR. EPPICH: Object to the
13 form; foundation.

14 A. It could be a red flag for
15 something to -- for investigation for that
16 pharmacy.

17 QUESTIONS BY MR. BOGLE:

18 Q. Okay. And the same would be
19 true, for example, for all these other
20 numbers as well, right? 41.3% is even a red
21 flag as far as hydrocodone sales for overall
22 sales, right?

23 MR. EPPICH: Object to the
24 form. Foundation.

25 A. It could be one of many

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1 different red flags that would be reviewed.

2 QUESTIONS BY MR. BOGLE:

3 Q. Okay. And you've seen this
4 Order to Show Cause petition before, right?

5 A. I have seen it.

6 Q. Yeah. So when you saw these
7 numbers, you personally, did you -- did that
8 cause you to be concerned that you guys
9 missed something here?

10 MR. EPPICH: Object to the
11 form.

12 A. I don't recall what I thought
13 when I first saw this.

14 QUESTIONS BY MR. BOGLE:

15 Q. What about when you see it now?

16 MR. EPPICH: Object to the
17 form.

18 A. I think it's a red flag that
19 should have had investigation.

20 QUESTIONS BY MR. BOGLE:

21 Q. And one wasn't done, was it --

22 MR. EPPICH: Object to the
23 form.

24 QUESTIONS BY MR. BOGLE:

25 Q. -- prior to these sales being

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1 made?

2 MR. EPPICH: Object to the form
3 to the extent it calls for
4 speculation.

5 A. I'm not sure what was done.

6 QUESTIONS BY MR. BOGLE:

7 Q. Okay. Well, you do know that
8 you personally were listed as a potential
9 witness in this proceeding, right?

10 A. Yes, I was listed.

11 Q. Okay. And that proposed
12 testimony was provided by McKesson that they
13 anticipated you would provide, right?

14 A. I didn't play any part in the
15 preparation of that document, but I later
16 became aware that I was listed there.

17 Q. Okay. And so if you look, for
18 example -- let's go to that proposed
19 testimony section. Let me find it for you.

20 If you'd go to page ending 6347
21 in this document. You see here this page is
22 the pre-hearing statement of McKesson
23 Corporation.

24 Do you see that?

25 A. I see that.

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1 Q. And the drafter is indicated to
2 be the same Mr. John Gilbert that we talked
3 about as being your outside counsel, right?
4 A. That's correct.
5 Q. Okay. And then if you go to
6 the next page, 6348, there starts a witness
7 list.
8 Do you see that?
9 A. Yes, I see that.
10 Q. And that's proposed testimony
11 and then there's a witness list.
12 Do you see that?
13 A. I do.
14 Q. Okay. And if you go to the
15 next page on that witness list, you're listed
16 as the number 6 witness there.
17 A. Yes, I am.
18 Q. Okay. And then what follows
19 is, as McKesson's counsel filed it, the
20 proposed testimony for each of these
21 witnesses. So I want to look at the proposed
22 testimony for you, which starts on page 6364.
23 You see there three-quarters of
24 the way down the page, it says "Proposed
25 Testimony of Gary Hilliard."

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1 You see that?
2 A. I see that.
3 Q. Okay. So you're saying when
4 this was drafted, your outside counsel didn't
5 consult you at all as to whether these things
6 are actually things you would say. Is that
7 what you're saying?
8 A. That's correct.
9 MR. EPPICH: Object to the
10 form. Misstates prior testimony.
11 QUESTIONS BY MR. BOGLE:
12 Q. Okay. Looking in the first
13 paragraph, middle of the way through, it
14 says, "For the last nine years."
15 Do you see that that sentence?
16 A. I see that.
17 Q. For the last nine years
18 Mr. Hilliard has been the Director of
19 Regulatory Affairs for McKesson Corporation.
20 He is responsible for regulatory compliance
21 for 35 DEA registered DCs.
22 Do you see that?
23 A. Yes, I see that.
24 Q. Is that an accurate statement
25 at that point in time, that you would have

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1 been responsible for regulatory compliance
2 for 35 DEA registered DCs?
3 MR. EPPICH: Objection,
4 foundation. Form.
5 A. I had DEA oversight for our
6 operations in pharma.
7 QUESTIONS BY MR. BOGLE:
8 Q. Okay. Do you have any reason
9 to think that that's not an accurate
10 statement at that point in time?
11 MR. EPPICH: Object to the
12 form; foundation.
13 A. Again, I had DEA
14 responsibilities for our pharma distribution
15 centers.
16 QUESTIONS BY MR. BOGLE:
17 Q. Okay. And it continues, the
18 next sentence: He provides support to the
19 DCs -- which is distribution centers, right?
20 A. That's correct.
21 Q. Okay. -- on all federal
22 regulatory requirements and state
23 requirements including boards of pharmacy and
24 departments of health.
25 Right?

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1 MR. EPPICH: Objection to the
2 form; foundation.
3 QUESTIONS BY MR. BOGLE:
4 Q. That's what it says.
5 MR. EPPICH: Foundation.
6 A. That's what it states.
7 QUESTIONS BY MR. BOGLE:
8 Q. All right. So now let's go to
9 page 6370 in this document. It's still part
10 of your testimony, proposed testimony.
11 The last paragraph reads:
12 Mr. Hilliard will testify that McKesson did
13 not immediately focus on Florida pharmacies
14 after the September 1, 2005 meeting because
15 it appeared from the data provided to
16 McKesson that Colorado was the immediate
17 problem.
18 Do you see that statement?
19 A. Yes, I see that.
20 Q. Okay. Is that accurate?
21 MR. EPPICH: Objection to the
22 form; foundation.
23 A. I don't recall. They provided
24 us the names of the pharmacies and we went
25 and acted on those.

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1 QUESTIONS BY MR. BOGLE:
 2 Q. Okay. Well, one pharmacy name
 3 that was provided was a Florida pharmacy,
 4 United Prescription Services, right?
 5 A. Correct.
 6 Q. Okay. So I'm asking, this
 7 statement here that proposed testimony for
 8 you at this hearing, is that accurate? Would
 9 you have said that on the stand?
 10 MR. EPPICH: Objection to the
 11 form; foundation.
 12 A. I didn't prepare this or
 13 have -- I don't recall having any
 14 conversations with Mr. Gilbert or my superior
 15 on this, so I don't recall having any
 16 agreement that this is what I would have
 17 stated on the stand.
 18 QUESTIONS BY MR. BOGLE:
 19 Q. Right. So that's why I'm
 20 asking you. You've seen it now. Would you
 21 have said that?
 22 MR. EPPICH: Object to the
 23 form; foundation.
 24 A. I don't know without
 25 conversation -- prior conversations.

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1 QUESTIONS BY MR. BOGLE:
 2 Q. Is that true? Is it true that
 3 McKesson did not immediately focus on Florida
 4 pharmacies after the September 1, 2005
 5 meeting because it appeared from the data
 6 provided to McKesson that Colorado was the
 7 immediate problem? Is that a true statement
 8 in your mind?
 9 MR. EPPICH: Object to the
 10 form.
 11 A. I don't recall.
 12 QUESTIONS BY MR. BOGLE:
 13 Q. Okay. Do you specifically
 14 recall anything that would indicate that
 15 statement is untrue by your counsel?
 16 MR. EPPICH: Object to the
 17 form.
 18 A. I recall that we looked at the
 19 pharmacies' nature --
 20 MR. EPPICH: Hold on. Hold on.
 21 Let me pause here. I'd just caution
 22 the witness that if this question is
 23 seeking anything that's any
 24 discussions or conferences with
 25 counsel, that those would be

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1 privileged discussions and I'd
 2 instruct the witness not to answer.
 3 MR. BOGLE: I think it's waived
 4 to the extent that you're providing
 5 his proposed testimony. I'm just
 6 asking if he would have said that and
 7 if that was an incorrect statement.
 8 MR. EPPICH: No, you actually
 9 delved a little bit further than that,
 10 Brandon. I'm happy to have you ask
 11 questions about what's stated in the
 12 document, but when you ask him about
 13 what was discussed with counsel in
 14 relation to these statements, that's
 15 where we have to draw the line.
 16 MR. BOGLE: Okay. Well,
 17 I'll reask it. I don't think that's
 18 what I was getting at. The question
 19 is already gone now, so I don't know
 20 if that's what I said or not, but
 21 let's reask it.
 22 QUESTIONS BY MR. BOGLE:
 23 Q. Let me ask you this: You can
 24 read the statement now, right?
 25 A. Correct.

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1 Q. And you have read the statement
 2 now, right?
 3 A. Correct.
 4 Q. Do you need more time to read
 5 it now?
 6 A. No.
 7 Q. Okay. Is there anything about
 8 this sentence that I read to you, which
 9 states: Mr. Hilliard will testify that
 10 McKesson did not immediately focus on Florida
 11 pharmacies after the September 1, 2005
 12 meeting because it appeared from the data
 13 provided to McKesson that Colorado was the
 14 immediate problem, that statement, anything
 15 about that statement as you sit here today
 16 that you're willing to stand up and say
 17 that's not true?
 18 MR. EPPICH: Object to the
 19 form.
 20 A. I don't recall enough about the
 21 minute details of which steps we took at that
 22 time to comment in depth on this.
 23 QUESTIONS BY MR. BOGLE:
 24 Q. Sir, you say "minute details."
 25 I mean, this is more than 2 million doses of

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1 hydrocodone in 11 days. Is that a minute
2 detail to you, whether you'd investigate that
3 promptly?

4 MR. EPPICH: Object to the
5 form. Argumentative.

6 QUESTIONS BY MR. BOGLE:

7 Q. I'm a little confused by that
8 statement, sir. Is that a minute detail to
9 you?

10 MR. EPPICH: Object to the
11 form. Argumentative.

12 A. So which -- the exact which
13 step was taken before the second step, I
14 don't have that recollection of what pharmacy
15 was looked at prior to another pharmacy.

16 QUESTIONS BY MR. BOGLE:

17 Q. Okay. When the DEA listed for
18 you what appears to be two pharmacies on
19 September 1, 2005, was there a lack of
20 resources at McKesson to start investigating
21 both of those immediately --

22 MR. EPPICH: Object to the
23 form.

24 QUESTIONS BY MR. BOGLE:

25 Q. -- at that point in time? Did

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1 you guys not have the resources to look at
2 two pharmacies immediately?

3 MR. EPPICH: Object to the
4 form. Argumentative.

5 A. My recollection is that those
6 pharmacies were acted on after that meeting.

7 QUESTIONS BY MR. BOGLE:

8 Q. Okay. But you don't know
9 exactly when, right?

10 A. I don't recall.

11 Q. Okay. Let's go back to
12 page 6325. You see here this is part of
13 DEA's proposed testimony, and the top here is
14 from Diversion Investigator Shirley Scott.

15 Do you see that name?

16 A. I see the name.

17 Q. Okay. Three-quarters of the
18 way down this page, it says: She will
19 testify that Accumed dispensed more than 50
20 times as much hydrocodone as the average
21 Florida retail pharmacy.

22 Do you see that?

23 A. No, I do not.

24 Q. You don't see that statement?

25 A. Where are you at, please?

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1 Q. Yeah. If you want to look at
2 my finger here, I'm on 6325.

3 A. I'm sorry, at the bottom.

4 Q. Yeah.

5 A. Okay.

6 Q. I'll read it again just so
7 we're clear.

8 A. Thank you.

9 Q. It says -- and this is related
10 to investigator Shirley Scott -- she will
11 testify that Accumed dispensed more than 50
12 times as much hydrocodone as the average
13 Florida retail pharmacy.

14 Do you see that?

15 A. I see that.

16 Q. A pharmacy dispensing 50 times
17 the average for the state they're in, you
18 would agree with me that's a red flag, right,
19 for potential diversion?

20 MR. EPPICH: Objection,
21 foundation, form; calls for a legal
22 conclusion.

23 A. I don't know.

24 QUESTIONS BY MR. BOGLE:

25 Q. You don't know? So if somebody

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1 in 2005 that worked for McKesson came to you
2 and said, "Listen, I've got information that
3 a pharmacy that we're providing hydrocodone
4 to is dispensing 50 times more than the
5 average for their state," what would you have
6 done --

7 MR. EPPICH: Objection.

8 QUESTIONS BY MR. BOGLE:

9 Q. -- from a due diligence
10 perspective?

11 MR. EPPICH: Objection, form.
12 Incomplete hypothetical.

13 A. I don't recall specifics. The
14 due diligence would have reviewed the
15 registration and the business activities.

16 QUESTIONS BY MR. BOGLE:

17 Q. Okay. But certainly if
18 somebody came to you internally at McKesson
19 and said, "Listen, I've got information that
20 says Accumed Pharmacy is dispensing 50 times
21 more hydrocodone than the average Florida
22 pharmacy," that's something that would have
23 been of interest to you from a due diligence
24 perspective, right?

25 MR. EPPICH: Objection to the

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1 form. Foundation.
2 A. It could have been of interest
3 to me.
4 QUESTIONS BY MR. BOGLE:
5 Q. Okay. Can you give me any
6 reason why that wouldn't have mattered to
7 you?
8 MR. EPPICH: Objection to the
9 form.
10 A. I don't have knowledge of it
11 right now.
12 QUESTIONS BY MR. BOGLE:
13 Q. Okay. Let's go to page 6328.
14 And the third paragraph here -- actually,
15 it's the second full paragraph where it says
16 "Mr. Mapes will testify."
17 Do you see that?
18 A. I see that.
19 Q. And I'll tell you this relates
20 to Mr. Mapes' proposed testimony at DEA,
21 where it says: Mr. Mapes will testify that
22 he concludes that seven Tampa, Florida area
23 internet pharmacy operations have been
24 distributing controlled substances in
25 violation of Title 21 United States Code,

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1 Sections 829 and 841(a)(1) in that the
2 owners, pharmacists and employees all have
3 direct knowledge that there is no legitimate
4 physician/patient relationship established
5 between the purported prescribing physician
6 and the customers who order controlled
7 substances directly through their websites.
8 Each of these pharmacies received hydrocodone
9 distributions from McKesson Lakeland.
10 Do you see that?
11 A. I see that.
12 Q. And you've seen that conclusion
13 before today, right?
14 MR. EPPICH: Objection,
15 foundation. Form.
16 A. I don't recall seeing this
17 exact paragraph.
18 QUESTIONS BY MR. BOGLE:
19 Q. All right. You know that was
20 the DEA's opinion, though, right? Mr. Mapes'
21 opinion specifically, right?
22 MR. EPPICH: Objection,
23 foundation. Calls for speculation.
24 A. I'm not sure what Mr. Mapes'
25 opinion is.

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1 QUESTIONS BY MR. BOGLE:
2 Q. Okay. Now, these seven
3 pharmacies that McKesson was distributing to
4 in Florida that were the subject of this
5 Order to Show Cause proceeding, McKesson did
6 not shut off sales to these seven pharmacies
7 in 2006, did it?
8 MR. EPPICH: Objection to form.
9 Calls for speculation.
10 A. I don't know when the sales of
11 pharmaceuticals was stopped to these
12 pharmacies.
13 QUESTIONS BY MR. BOGLE:
14 Q. You do have an understanding in
15 your involvement in this proceeding that
16 these seven pharmacies were purchasing very
17 large amounts of hydrocodone from McKesson
18 from October 2005 to January 2006, for
19 example, right?
20 MR. EPPICH: Objection to form.
21 QUESTIONS BY MR. BOGLE:
22 Q. You've seen that data, haven't
23 you?
24 MR. EPPICH: Objection to form.
25 Calls for speculation.

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1 A. I've seen what's stated on the
2 documents.
3 QUESTIONS BY MR. BOGLE:
4 Q. Okay. And what you've seen on
5 those documents are very large distributions
6 of hydrocodone from McKesson in that
7 three-month window of time, right?
8 MR. EPPICH: Objection to form
9 and characterization.
10 A. I'm not sure what their
11 appropriate levels should have been.
12 QUESTIONS BY MR. BOGLE:
13 Q. Even today you don't know what
14 they should have actually gotten from you
15 guys?
16 MR. EPPICH: Object to the
17 form.
18 A. I don't know.
19 QUESTIONS BY MR. BOGLE:
20 Q. Okay. Let's look at
21 Exhibit 1.1947, which is Exhibit 7 to your
22 deposition, and that's MCKMDL00497154.
23 (McKesson-Hilliard Exhibit 7
24 was marked for identification.)
25 --oOo--

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1 QUESTIONS BY MR. BOGLE:

2 Q. Okay. And what I've handed
3 you, sir, is another document produced to us
4 by McKesson related to this Order to Show
5 Cause proceeding. And you see there's a
6 government exhibit sticker number 38 for this
7 one.

8 Do you see that at the bottom?

9 A. Yes, I see that.

10 Q. Okay. And so this data, I'll
11 represent to you, matches up with their
12 exhibit numbers they list in the Order to
13 Show Cause pleadings we just looked at, okay?

14 A. Okay.

15 Q. If you have any reason to
16 disagree with me, let me know. But I looked
17 at it.

18 And so if you look here, this
19 actually has McKesson hydrocodone sales for
20 October 1, 2005 through January 31, 2006.

21 Do you see that?

22 A. Yes, I see that.

23 Q. And there's a pie chart there,
24 right?

25 A. Yes, I see that.

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1 Q. And so, for example, for Avee
2 Pharmacy, it notes 1,754,800 doses during
3 this October 1, 2005 to January 31, 2006
4 period of time for McKesson hydrocodone
5 sales.

6 Do you see that?

7 MR. EPPICH: Object to the
8 form. Misstates the document.

9 A. I see what's stated on the
10 document.

11 QUESTIONS BY MR. BOGLE:

12 Q. Okay. Do you have any reason
13 to think that's not what that's referring to?

14 A. I don't know enough about this
15 document to know otherwise.

16 Q. Okay. And it lists there for
17 example, as well, Medipharma, 1,252,000 doses
18 of hydrocodone from October 1, 2005 to
19 January 31, 2006.

20 Do you see that in the chart?

21 A. Yes, I see it on the chart.

22 Q. And, for example, if you go to
23 the second page here, so further discussion
24 on this, and they actually compared these
25 seven pharmacies to 299 other pharmacies.

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1 Do you see the data there?

2 MR. EPPICH: Objection to form.
3 Foundation.

4 A. I see what's stated.

5 QUESTIONS BY MR. BOGLE:

6 Q. Okay. And that chart is titled
7 McKesson Hydrocodone distributions October 1,
8 2005 through January 31, 2006.

9 Do you see that title?

10 MR. EPPICH: Objection to form;
11 foundation.

12 A. I see what's stated on the
13 document.

14 QUESTIONS BY MR. BOGLE:

15 Q. Okay. And there's a sum of
16 dosage units, and for 299 other pharmacies
17 the DEA lists 10,767,050 doses of hydrocodone
18 for 299 pharmacies, right?

19 MR. EPPICH: Objection to the
20 form.

21 QUESTIONS BY MR. BOGLE:

22 Q. That's the data provided here.

23 MR. EPPICH: Objection,
24 foundation.

25 A. That's what's stated on the

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1 document.

2 QUESTIONS BY MR. BOGLE:

3 Q. Okay. And they compare that to
4 these other seven pharmacies, and just doing
5 the rough math for these other seven
6 pharmacies during this three-month period in
7 time, four-month period in time, there's
8 almost 7 million doses of hydrocodone to
9 these seven pharmacies, right? As compared
10 to these 299 other pharmacies.

11 MR. EPPICH: Object to form;
12 foundation.

13 QUESTIONS BY MR. BOGLE:

14 Q. You see that math, right?

15 MR. EPPICH: Object to form;
16 foundation.

17 A. I see what's listed on the
18 document.

19 QUESTIONS BY MR. BOGLE:

20 Q. Okay. And that's the math,
21 right?

22 MR. EPPICH: Object to the form
23 and foundation.

24 A. I see what's written on the
25 document for the total.

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1 QUESTIONS BY MR. BOGLE:
2 Q. Okay. And the grand total is
3 17,136,250, which counts the 299 pharmacies
4 plus the other seven pharmacies subject to
5 the Order to Show Cause, right?
6 MR. EPPICH: Objection,
7 foundation.
8 A. I see what's stated on the
9 form.
10 QUESTIONS BY MR. BOGLE:
11 Q. And that's what's stated,
12 right?
13 A. That's what's listed on the
14 form.
15 Q. Okay. Have you ever reviewed
16 this exhibit before?
17 A. In the preparing,
18 pre-deposition.
19 Q. Okay. And while you guys were
20 getting ready for the Order to Show Cause
21 hearing, I didn't see it in the pleadings --
22 let me know if you see it anywhere -- was
23 there any submission by McKesson saying this
24 data is wrong that the DEA is submitting here
25 that I just reviewed with you?

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1 MR. EPPICH: Object to form;
2 foundation. Calls for speculation.
3 A. I don't know anything about it.
4 QUESTIONS BY MR. BOGLE:
5 Q. Okay. Well, again, you've got
6 the pleadings in front of you. If you happen
7 to see anything that shows that you guys
8 contested that -- I didn't find anything. If
9 you find anything that shows that you guys
10 contested that, let me know during the
11 deposition, okay?
12 MR. EPPICH: Object to the
13 form; calls for speculation.
14 QUESTIONS BY MR. BOGLE:
15 Q. And these seven pharmacies
16 during this period of time, late October
17 to -- '05 -- strike that.
18 These pharmacies from October
19 '05 to January '06 were also some of the
20 biggest purchasing pharmacies for hydrocodone
21 in the country, right?
22 MR. EPPICH: Objection,
23 foundation.
24 QUESTIONS BY MR. BOGLE:
25 Q. You know that, don't you?

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1 MR. EPPICH: Foundation, calls
2 for speculation. Form.
3 A. I don't know.
4 QUESTIONS BY MR. BOGLE:
5 Q. Never heard that before?
6 MR. EPPICH: Objection, form.
7 Calls for speculation.
8 A. I don't recall.
9 QUESTIONS BY MR. BOGLE:
10 Q. Okay. Let me hand you another
11 DEA exhibit for the Order to Show Cause
12 hearing marked as Exhibit 10, which is
13 1.1951, Bates number is MCKMDL00496536.
14 THE REPORTER: 10?
15 MR. BOGLE: Did I skip one?
16 I'm sorry, let me get that number
17 back. I may have skipped -- missing
18 some stickers here. Oh, I buried it.
19 Okay. Sorry.
20 (McKesson-Hilliard Exhibit 8
21 was marked for identification.)
22 QUESTIONS BY MR. BOGLE:
23 Q. So it's actually Exhibit 8 is
24 Exhibit 1.1951, so correcting the number.
25 Same document, just correcting the exhibit

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1 number.
2 Okay. And this again has a
3 government exhibit number, number 3. You see
4 that stamp on there?
5 A. Yes, I see that.
6 Q. Okay. And this document is
7 titled Pharmacy Rankings for Hydrocodone,
8 October 1, 2005 to January 31, 2006.
9 Do you see that?
10 A. Yes, I see that.
11 Q. Okay. And again, it lists
12 these same seven pharmacies that we've been
13 talking about, right?
14 MR. EPPICH: Object to the
15 form; foundation.
16 A. I see what's listed here.
17 QUESTIONS BY MR. BOGLE:
18 Q. Which is the names of the same
19 seven pharmacies, right?
20 MR. EPPICH: Objection to the
21 form; foundation.
22 A. They appear to be the same
23 names.
24 QUESTIONS BY MR. BOGLE:
25 Q. Okay. And, for example, if we

<p style="text-align: right;">Page 154</p> <p>1 look at a couple of these, Medipharma, their 2 U.S. ranking for hydrocodone from this 3 four-month window is number 3 in the United 4 States. 5 Do you see that? 6 MR. EPPICH: Objection to the 7 form; calls for speculation. 8 QUESTIONS BY MR. BOGLE: 9 Q. That column? 10 A. I see what's stated under U.S. 11 ranking in that column. 12 Q. And what's stated is number 3, 13 right? 14 MR. EPPICH: Objection to the 15 form; foundation, calls for 16 speculation. 17 A. 3 is noted on that column, yes, 18 for Medipharma. 19 QUESTIONS BY MR. BOGLE: 20 Q. State ranking is number 1, 21 right? 22 MR. EPPICH: Objection to the 23 form; foundation, calls for 24 speculation. 25 A. Number 1 is listed for state</p>	<p style="text-align: right;">Page 156</p> <p>1 Q. Any reason why you wouldn't 2 have looked at the actual exhibits the DEA 3 was going to use to try to revoke a 4 registration or suspend a registration of one 5 of your distribution centers in preparation 6 for that hearing? 7 MR. EPPICH: Object to form, 8 calls for speculation, and to the 9 extent it calls for any privileged 10 communications. 11 A. I wasn't part of the settlement 12 agreement. It was handled by corporate. 13 QUESTIONS BY MR. BOGLE: 14 Q. But you were listed as a 15 witness that was going to defend the company, 16 right? 17 MR. EPPICH: Objection to the 18 form; asked and answered. 19 A. I was listed but I was never 20 brought in to be prepared or have discussions 21 on it. 22 QUESTIONS BY MR. BOGLE: 23 Q. Okay. So again, I think you 24 said when they put down this proposed 25 testimony for you, they didn't ask you if you</p>
<p style="text-align: right;">Page 155</p> <p>1 ranking. 2 QUESTIONS BY MR. BOGLE: 3 Q. Avee Pharmacy, for example, 4 their U.S. ranking is listed as number 6 5 during this time period for hydrocodone, 6 right? 7 MR. EPPICH: Object to the 8 form; foundation, calls for 9 speculation. 10 A. That's what's stated here. 11 QUESTIONS BY MR. BOGLE: 12 Q. State ranking is number 2, 13 right? 14 MR. EPPICH: Object to the 15 form; foundation, calls for 16 speculation. 17 A. It's what's stated here. 18 QUESTIONS BY MR. BOGLE: 19 Q. Have you ever seen this 20 document before? 21 A. During prep, preparation for 22 the deposition. 23 Q. Not in preparation for the 24 Order to Show Cause hearing? 25 A. Correct.</p>	<p style="text-align: right;">Page 157</p> <p>1 agreed with any of it, right? 2 MR. EPPICH: Objection. I 3 think that we are now on the edge of 4 seeking attorney-client 5 communications. 6 MR. BOGLE: I'm just asking him 7 whether the communication occurred, 8 not the substance of it. 9 QUESTIONS BY MR. BOGLE: 10 Q. I'm asking whether or not -- 11 MR. EPPICH: And I think -- 12 QUESTIONS BY MR. BOGLE: 13 Q. -- the testimony was shown to 14 you and were asked whether you agreed with 15 it. 16 MR. EPPICH: And I think asking 17 for that communication you're dealing 18 with communications with counsel. 19 MR. BOGLE: I don't agree. 20 This was filed as a public document, 21 as a pleading. I'm just asking him 22 whether he was asked whether it was 23 true. 24 MR. EPPICH: You're asking him 25 for the substance of an</p>

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1 attorney-client communication,
 2 Brandon.
 3 QUESTIONS BY MR. BOGLE:
 4 Q. Was there a communication, not
 5 the substance of it, was a communication had
 6 between you and McKesson's counsel as to
 7 whether you agreed with the substance of what
 8 they put down as your proposed testimony?
 9 MR. EPPICH: I'm going to
 10 instruct the witness not to answer
 11 that question. You're treading on
 12 that line again. You may ask him if
 13 he had a communication with his
 14 counsel about the document.
 15 MR. BOGLE: I think that's what
 16 I just asked.
 17 MR. EPPICH: No, you stepped
 18 over the line.
 19 QUESTIONS BY MR. BOGLE:
 20 Q. All right. We can agree that
 21 the testimony wasn't run by you, was it?
 22 MR. EPPICH: Objection to the
 23 form.
 24 A. I do not recall having
 25 conversations.

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1 QUESTIONS BY MR. BOGLE:
 2 Q. Okay. And in these DEA
 3 exhibits that we've just gone through, these
 4 two, for example, were not shown to you
 5 related to the Order to Show Cause hearing,
 6 right?
 7 A. That's not my recollection of
 8 seeing them.
 9 Q. Your recollection is not having
 10 seen them, right?
 11 A. I don't recall seeing them.
 12 Q. Okay. Would you have testified
 13 in favor of the company had you seen the two
 14 we just looked at?
 15 MR. EPPICH: Objection to the
 16 form; calls for speculation.
 17 A. I would have testified to the
 18 best of my knowledge.
 19 QUESTIONS BY MR. BOGLE:
 20 Q. Okay. And would that have
 21 included defending these hydrocodone sales
 22 that were made to these seven pharmacies by
 23 McKesson in that four-month period of time?
 24 MR. EPPICH: Objection to the
 25 form; calls for speculation.

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1 A. I don't have -- I don't recall
 2 the details of the scenarios in order to
 3 comment on that today.
 4 QUESTIONS BY MR. BOGLE:
 5 Q. Okay. Well, we just reviewed
 6 the discussion of what was dispensed at the
 7 January 2006 meeting. I've shown you some
 8 data that the DEA was planning to use against
 9 you guys at the Order to Show Cause hearing.
 10 What else would you need to see
 11 to say whether you would or would not have
 12 defended these sales as being the right thing
 13 to do?
 14 MR. EPPICH: Objection to the
 15 form; calls for speculation.
 16 QUESTIONS BY MR. BOGLE:
 17 Q. Because I may have it. Let me
 18 know. I'll try to find it. Tell me what you
 19 would like to see to tell us one way or the
 20 other whether you would have defended the
 21 company as to these sales for these four
 22 months for hydrocodone?
 23 MR. EPPICH: Objection to the
 24 form. Argumentative.
 25 A. I would have responded in

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1 accordance with what we did truthfully and
 2 honestly.
 3 QUESTIONS BY MR. BOGLE:
 4 Q. Did you guys do the right
 5 thing --
 6 MR. EPPICH: Object to the
 7 form. Argumentative.
 8 QUESTIONS BY MR. BOGLE:
 9 Q. -- for these sales?
 10 MR. EPPICH: Object to the
 11 form. Argumentative.
 12 A. I have no comment on that.
 13 QUESTIONS BY MR. BOGLE:
 14 Q. You don't have an opinion one
 15 way or the other as to whether you guys
 16 should or should not have dispersed that much
 17 hydrocodone in a four-month period to these
 18 seven pharmacies? Is that your testimony,
 19 you don't have an opinion one way or the
 20 other --
 21 MR. EPPICH: Object to the
 22 form.
 23 QUESTIONS BY MR. BOGLE:
 24 Q. -- as you sit here today?
 25 MR. EPPICH: Object to the

<p style="text-align: right;">Page 162</p> <p>1 form. Argumentative.</p> <p>2 A. I don't have a comment.</p> <p>3 QUESTIONS BY MR. BOGLE:</p> <p>4 Q. Okay. Do you have an opinion?</p> <p>5 MR. EPPICH: Object to the</p> <p>6 form; argumentative, asked and</p> <p>7 answered.</p> <p>8 A. No.</p> <p>9 MR. EPPICH: Brandon, let's go</p> <p>10 ahead and take a break.</p> <p>11 MR. BOGLE: Okay.</p> <p>12 THE VIDEOGRAPHER: Off the</p> <p>13 record at 11:34.</p> <p>14 (Recess taken, 11:34 a.m. to</p> <p>15 11:45 a.m.)</p> <p>16 THE VIDEOGRAPHER: All right,</p> <p>17 stand by. The time is 11:45, back on</p> <p>18 the record. Beginning of File 3.</p> <p>19 QUESTIONS BY MR. BOGLE:</p> <p>20 Q. All right, Mr. Hilliard, I want</p> <p>21 to shift gears to a different topic here with</p> <p>22 you. We talked a little bit earlier just</p> <p>23 briefly about the DU45 report.</p> <p>24 Do you recall that discussion</p> <p>25 generally?</p>	<p style="text-align: right;">Page 164</p> <p>1 A. Correct.</p> <p>2 Q. Okay. And the DU45 was one of</p> <p>3 the reports listed in Section 55 that would</p> <p>4 be produced and submitted to the DEA,</p> <p>5 correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. I'll take a look at a</p> <p>8 few components of Section 55 here. So I'm</p> <p>9 going to hand you what I'm marking as</p> <p>10 Exhibit 9, which is 1.1555. The Bates number</p> <p>11 is MCKMDL00346554.</p> <p>12 (McKesson-Hilliard Exhibit 9</p> <p>13 was marked for identification.)</p> <p>14 QUESTIONS BY MR. BOGLE:</p> <p>15 Q. When I read all those Bates</p> <p>16 numbers, you can ignore me. I'm supposed to</p> <p>17 do that, unfortunately. I won't be asking</p> <p>18 you Bates number quizzes, I can promise you</p> <p>19 that.</p> <p>20 A. Thank you.</p> <p>21 Q. Okay. What I've handed you</p> <p>22 here is the Drug Operations Manual,</p> <p>23 Section 55, dated July 2000, correct?</p> <p>24 A. That is correct.</p> <p>25 Q. Okay. And again, I think you</p>
<p style="text-align: right;">Page 163</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And also talked a little</p> <p>3 bit about Section 55 generally.</p> <p>4 Do you recall that discussion?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So Section 55 was the</p> <p>7 standard operating procedure that was in</p> <p>8 place when you joined McKesson that was meant</p> <p>9 to be the Suspicious Order Monitoring Program</p> <p>10 for the company. True?</p> <p>11 MR. EPPICH: Object to the</p> <p>12 form.</p> <p>13 A. There was a section within</p> <p>14 Section 55 that contained that type of</p> <p>15 information.</p> <p>16 QUESTIONS BY MR. BOGLE:</p> <p>17 Q. Okay. So it was included</p> <p>18 within Section 55. True?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. I think you told me, I</p> <p>21 just want to make sure I understand. When</p> <p>22 you joined the company in 1997, Section 55,</p> <p>23 and specifically the components with the</p> <p>24 suspicious order monitoring provisions, were</p> <p>25 already in place. True?</p>	<p style="text-align: right;">Page 165</p> <p>1 said this, but you're familiar with this</p> <p>2 manual, correct?</p> <p>3 A. Yes, I am.</p> <p>4 Q. All right. Let's go to -- ah</p> <p>5 jeez, wrong page number. Page .29. Sorry.</p> <p>6 A. I'm sorry, repeat that?</p> <p>7 Q. .29?</p> <p>8 A. .29.</p> <p>9 Q. Yes, sir.</p> <p>10 Okay. On this page, you see</p> <p>11 there's a section (c) titled Daily Controlled</p> <p>12 Substance Suspicious Order Warning Report,</p> <p>13 and then it's listed a bunch of other stuff,</p> <p>14 but including DU45L500.</p> <p>15 Do you see that?</p> <p>16 A. Yes, I see that.</p> <p>17 Q. Okay. So this section here</p> <p>18 talks about the daily version of the DU45</p> <p>19 report. True?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And if you go down to</p> <p>22 the next paragraph, it says: The same</p> <p>23 factors that are used for the Customer Recap</p> <p>24 Variance -- and then it gives a description</p> <p>25 of the report -- are also used for the Daily</p>

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1 Controlled Substance Suspicious Order Warning
2 Report.

3 Then it says: 3X monthly
4 average for Schedule II and Schedule III
5 reportables and 8X/monthly averages for
6 IIN-V.

7 Do you see that?

8 A. Yes, I see that.

9 Q. Okay. So I want to break that
10 down and make sure it's clear on what that
11 means. So both for the DU45 reports run
12 daily and monthly, an order would appear on
13 the report for any controlled substance
14 that's in Schedule II or Schedule III if the
15 order was three times the average for
16 customers of McKesson for that product.
17 True?

18 MR. EPPICH: Object to the
19 form.

20 A. It was three times the monthly
21 average for 12-month sales and it was for
22 Schedule II and III narcotics.

23 QUESTIONS BY MR. BOGLE:

24 Q. Okay. So included within that
25 would be opioids, right?

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1 A. Correct.

2 Q. Okay. So you said a 12-month
3 history, so let's talk about how that worked.
4 Was it a 12-month same customer history that
5 this number would be derived from?

6 A. Yes, that's correct.

7 Q. Okay. So, for example, you
8 would look at the 12 months for X pharmacy,
9 the prior 12 months, and you would do what
10 with that data to determine how the three
11 times average would be generated?

12 MR. EPPICH: Object to the
13 form; foundation.

14 QUESTIONS BY MR. BOGLE:

15 Q. Walk me through that process.

16 A. The system is taking 12 months'
17 worth of sales history based on that item and
18 then adds a factor of three times, I'm sorry,
19 three times the average, and if the orders
20 exceed that threshold then it shows up on the
21 report.

22 Q. Okay. And so an average is
23 generated from the prior 12 months. Does
24 that roll over every month so it's looking at
25 a new 12-month period?

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1 MR. EPPICH: Object to the
2 form.

3 A. As I recall, it's a rolling
4 12-month period.

5 QUESTIONS BY MR. BOGLE:

6 Q. Right. So we'll walk through
7 this just to make sure it's clear. So let's
8 say, for example, we're in February 2007.
9 The prior 12 months' data that would be
10 looked at for February 2007 would be the 12
11 months prior to that month. True?

12 A. Correct.

13 Q. Okay. So, for example, when
14 you go to March 2007, that would then include
15 the February 2007 data and the first month
16 from the prior 12 months would drop off the
17 analysis. True?

18 A. I believe that to be correct.

19 Q. Okay. So if a customer's
20 orders for a given month did not exceed three
21 times their prior 12-month average, they
22 would not appear on the DU45 report. True?

23 A. That's correct.

24 Q. Okay. Were there any other
25 calculations that went into the DU45 report

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1 other than the prior 12 months' average and
2 looking at three times that average, if it
3 hits that, it gets kicked to the report? Any
4 other variables?

5 MR. EPPICH: Object to the
6 form.

7 A. Not to my knowledge.

8 QUESTIONS BY MR. BOGLE:

9 Q. Okay. All right. I want to
10 look at a DU45 report that was produced to
11 us. You may want to keep this exhibit kind
12 of just near you, but I want to look at a
13 sample DU45 with you.

14 All right. I'm going to hand
15 you what I'm marking as Exhibit 10, which is
16 1.2100. Bates number is MCKMDL00660789.
17 (McKesson-Hilliard Exhibit 10
18 was marked for identification.)

19 QUESTIONS BY MR. BOGLE:

20 Q. Here's your version. I
21 shouldn't say "version," they're all the
22 same, but your copy. It's beefy.

23 Okay. And what I've handed
24 you, Mr. Hilliard, I'll represent to you was
25 produced to us as part of this litigation as

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1 being a DU45 report from -- I believe it's
 2 the Oklahoma City distribution center. I
 3 think you can determine that on the second
 4 page of the document, that that's the
 5 distribution center this pertains to. Let me
 6 know if you disagree with that.
 7 A. Yes. This does appear to come
 8 from the Oklahoma City distribution center.
 9 Q. Okay. And going back to the
 10 first page, this is noted to be a monthly
 11 report that I'm showing you here, right?
 12 A. That is correct.
 13 Q. Okay. And it's dated
 14 April 3rd, 2007. That's the date on the
 15 first page, right?
 16 A. That's what's stated on the
 17 first page.
 18 Q. Okay. So you obviously have an
 19 understanding and knowledge of DU45 reports.
 20 Is what I'm showing you here consistent with
 21 what a DU45 report would look like, a monthly
 22 report?
 23 A. Yes.
 24 Q. Okay. Now, these would -- so
 25 this would be submitted to the DEA on a

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1 monthly basis, correct? This version.
 2 A. That's correct.
 3 MR. EPPICH: Object to the
 4 form.
 5 QUESTIONS BY MR. BOGLE:
 6 Q. And just looking, for example,
 7 at a few of these pages, I'm looking at the
 8 second page, which is Bates ending 0790,
 9 there's three fentanyl orders listed here for
 10 this customer, right?
 11 MR. EPPICH: Objection,
 12 foundation.
 13 A. Fentanyl is listed here, yes.
 14 QUESTIONS BY MR. BOGLE:
 15 Q. Okay. Fentanyl being an opioid
 16 product, right?
 17 MR. EPPICH: Objection,
 18 foundation.
 19 A. Yes, it is.
 20 QUESTIONS BY MR. BOGLE:
 21 Q. Okay. And go to the next page,
 22 for example, there's an order listed for this
 23 customer for oxycodone, an oxycodone
 24 combination product, right?
 25 A. That's what's stated, yes.

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1 Q. Okay. Again, another opioid,
 2 right?
 3 A. Yes, that's correct.
 4 Q. Okay. If you flip over to the
 5 next page, Bates page ending 0792, there are
 6 what I count to be 11 separate orders here
 7 for this customer, again, all for various
 8 opioid products, right?
 9 MR. EPPICH: Objection,
 10 foundation.
 11 A. That is what's listed here.
 12 QUESTIONS BY MR. BOGLE:
 13 Q. Okay. And I'm not going
 14 through every page here, but just one more
 15 just to show you.
 16 Page 0793, for this customer,
 17 there are -- looks like nine different orders
 18 for either hydrocodone or oxycodone listed
 19 here, right?
 20 A. That is what's listed.
 21 Q. Okay. And so what's listed in
 22 this report, for example, at this time
 23 period, April 2007, would have been orders
 24 that were placed by a customer, filled by
 25 McKesson, and then appeared on this report

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1 thereafter and sent to the DEA, right?
 2 MR. EPPICH: Object to the
 3 form. Calls for speculation.
 4 A. That would have been the
 5 process.
 6 QUESTIONS BY MR. BOGLE:
 7 Q. Right. Because these are all
 8 sales. This product was provided to the
 9 customers, right? Everything listed in this
 10 report.
 11 MR. EPPICH: Object to the
 12 form, the characterization.
 13 A. That is my recollection.
 14 QUESTIONS BY MR. BOGLE:
 15 Q. Right. So the DU45 report is
 16 listing sales, not just the order prior to
 17 the sale, right?
 18 MR. EPPICH: Object to the
 19 form, characterization.
 20 A. My recollection is it contains
 21 the sales.
 22 QUESTIONS BY MR. BOGLE:
 23 Q. Right. And, for example, if
 24 you see on 0793 in the left-hand column,
 25 there's actually invoice numbers and invoice

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1 dates for each of these, right?

2 A. Yes, there is.

3 Q. And you invoice at the time of

4 sale, right?

5 MR. EPPICH: Objection;

6 foundation, calls for speculation.

7 A. I don't recall if it was the

8 time of sale or date of shipment.

9 QUESTIONS BY MR. BOGLE:

10 Q. Or of shipment, okay.

11 A. Shipment date.

12 Q. All right. So, for example,

13 what we've got here as Exhibit 10 is, I

14 believe, about 600-plus pages of what

15 McKesson deemed for this month to be

16 suspicious Schedule II or Schedule III

17 controlled substance orders, right?

18 MR. EPPICH: Objection to the

19 form.

20 A. These are what showed up on our

21 suspicious order report as -- and then

22 reported to the DEA.

23 QUESTIONS BY MR. BOGLE:

24 Q. Right. But what the whole

25 purpose of this was, you're providing 600 --

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1 in this instance, 600-plus pages to the DEA

2 for this month of suspicious controlled

3 substance sales that McKesson had made from

4 the prior month, right?

5 MR. EPPICH: Objection to the

6 form and the characterization.

7 A. They were submitted for DEA to

8 review. The report is titled "suspicious"

9 but it's orders that need to be reviewed and

10 they were supplied to DEA for review.

11 QUESTIONS BY MR. BOGLE:

12 Q. Okay. So let me make sure I

13 understand that. So when these reports would

14 have been submitted to the DEA, it was not

15 the intent of the regulatory department for

16 the conclusion to be drawn that McKesson

17 believed these were suspicious orders. Is

18 that true?

19 MR. EPPICH: Object to the

20 form; calls for speculation.

21 A. This was part of the Suspicious

22 Order Task Force. This was the format for

23 which industry came to the conclusion to

24 provide this information to the DEA and DEA

25 was good with it. There was DEA inspections

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1 that had occurred in our facilities and there

2 was never an issue with that. So this is the

3 format for which the original documentation

4 was supplied to DEA.

5 MR. BOGLE: I move to strike as

6 nonresponsive.

7 QUESTIONS BY MR. BOGLE:

8 Q. My question was simply that

9 during the time that you were with McKesson

10 in the regulatory department, was it your

11 understanding that the intent was when a DU45

12 report like the one we're looking at here was

13 supplied to the DEA, was that -- was that

14 intended to or not intended to be what

15 McKesson deemed to be suspicious orders from

16 the prior month?

17 MR. EPPICH: Object to the

18 form. It calls for speculation; asked

19 and answered.

20 A. Yeah. Again, it was -- this is

21 what needed to be reviewed. This was not

22 specifically a suspicious order.

23 QUESTIONS BY MR. BOGLE:

24 Q. Okay. So the view during this

25 time period when DU45s were used were that

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1 this is not specifically a suspicious order

2 report. Am I understanding you right?

3 MR. EPPICH: Object to the

4 form. Misstates prior testimony.

5 QUESTIONS BY MR. BOGLE:

6 Q. If I'm misstating it, let me

7 know. I'm trying to understand.

8 A. The title was Suspicious Order

9 Report or Suspicious Purchase Report, but

10 this -- with the vast quantity of orders that

11 are conducted on a daily and nightly basis,

12 this provides a threshold for which to

13 review.

14 And so reviews would be

15 conducted nightly on the reports and they'd

16 be flagged and then submitted to the DEA, and

17 then the report in its entirety would be

18 provided to the DEA on a monthly basis. So

19 they would have all this information.

20 Q. Right. I'm asking about from

21 McKesson's perspective, though, not DEA's

22 perspective. So from McKesson's perspective

23 as you understood it in the regulatory

24 department -- strike that, let me make it

25 even easier.

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1 Your perspective while you were
2 in the regulatory department when the DU45s
3 were used, did you understand these reports
4 to be suspicious order reports from the prior
5 month?

6 MR. EPPICH: Objection to the
7 form. Calls for a legal conclusion.
8 Asked and answered.

9 A. Again, this was a -- an
10 identifier for review. This didn't mean that
11 every order on here was suspicious.

12 QUESTIONS BY MR. BOGLE:

13 Q. Okay. So I think we talked
14 about this earlier, but you do understand
15 that during this time period, 2007, for
16 example, that the Controlled Substances Act
17 did require distributors to report suspicious
18 orders, right?

19 A. Correct.

20 Q. Okay. And so what's noted in a
21 report like the one we're looking at here at
22 Exhibit 10, was any sort of further
23 investigation done by McKesson to determine
24 if the orders were truly suspicious versus
25 just meeting this algorithm?

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1 MR. EPPICH: Object to the
2 form. Calls for speculation.

3 A. There was a due diligence
4 process, so nightly a supervisor would review
5 the nightly report. If they identified a
6 particular order, then it would be reviewed.
7 The customer would be contacted, ask them if
8 they, you know, made a mistake in this order,
9 did they intend to place this order. So
10 additional due diligence could be followed
11 up.

12 QUESTIONS BY MR. BOGLE:

13 Q. Okay. So was there any sort of
14 standard operating procedure that existed as
15 far as the due diligence to be done at the
16 distribution center level after a customer
17 appeared on the DU45 report?

18 MR. EPPICH: Object to the
19 form.

20 A. I don't recall exactly what it
21 stated in Section 55 in regards to the due
22 diligence process.

23 QUESTIONS BY MR. BOGLE:

24 Q. Okay. To your knowledge and
25 recollection, when the DU45 report was being

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1 utilized, was the review by the distribution
2 center supposed to entail anything beyond
3 order error as far as data entry on the order
4 itself, meaning the customer ordered more
5 than they meant to?

6 MR. EPPICH: Object to the
7 form. Asked and answered.

8 A. Again, they would be reviewed
9 nightly by a supervisor. If they saw an
10 anomaly on an order, then they could flag it
11 and then it would be reviewed the following
12 day. A manager would get a copy of it and
13 review it as well and they get a copy of the
14 final monthly document for review at the end
15 of the month.

16 QUESTIONS BY MR. BOGLE:

17 Q. Would -- during the time the
18 DU45s were utilized, was there a separate
19 reporting process for true suspicious orders
20 that were identified outside of just this
21 meeting this algorithm in the DU45?

22 MR. EPPICH: Object to the
23 form, characterization. Calls for
24 speculation.

25 A. If the DCM -- if something was

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1 identified and DCM felt that there was an
2 issue with it, then they would contact their
3 local DEA office.

4 QUESTIONS BY MR. BOGLE:

5 Q. Okay.

6 A. And there was a notification
7 log that they would fill out.

8 Q. Okay. So that would be
9 documented if such a contact was made, right?

10 MR. EPPICH: Object to the
11 form.

12 A. That is correct.

13 QUESTIONS BY MR. BOGLE:

14 Q. Okay. And so if -- was there
15 any involvement with the regulatory
16 department during this time period to assist
17 in that review to determine if there's
18 something truly suspicious going on with an
19 order outside of it just meeting this
20 algorithm?

21 MR. EPPICH: Object to the
22 form.

23 QUESTIONS BY MR. BOGLE:

24 Q. Or was that strictly by the
25 distribution center itself?

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1 MR. EPPICH: Object to the
2 form.
3 A. It was by the distribution
4 center and if there was an issue where they
5 needed to have discussions, then they would
6 contact regulatory.
7 QUESTIONS BY MR. BOGLE:
8 Q. Okay. Would you be one of the
9 people they would contact?
10 A. I would be one of the persons
11 they could contact.
12 Q. Okay. How frequently would you
13 be contacted while the DU45 was being used to
14 say, "Hey, I think we've got something
15 outside of just an algorithm breach"?
16 MR. EPPICH: Object to the
17 form.
18 A. I really don't recall the
19 frequency of contacts from those discussions.
20 QUESTIONS BY MR. BOGLE:
21 Q. Okay. And again, we're looking
22 at a report here from 2007. You're aware
23 that in that same year, in 2007, the DEA made
24 clear that the DU45 reports, in their view,
25 were not sufficient to satisfy suspicious

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1 order monitoring and reporting requirements,
2 right?
3 MR. EPPICH: Object to form.
4 Assumes facts not in evidence. Calls
5 for speculation.
6 A. There were comments -- there
7 were times where the DEA would tell us to
8 stop faxing the reports. They were
9 frustrated with the frequency and size of the
10 reports that would come in and asked us to
11 stop clogging up the fax machines, and since
12 it was part of the SOP which was based off
13 the original Suspicious Order Task Force
14 agreement, we would have to try to get
15 something in writing or document something in
16 order to stop those fax communications.
17 QUESTIONS BY MR. BOGLE:
18 Q. So when you received
19 communications from the DEA that these were,
20 I guess, basically too large and clogging up
21 the fax machines, was there any response from
22 anybody at regulatory at McKesson saying,
23 "Hey, we can filter this down to something
24 smaller to make it easier for you to review,
25 do some more due diligence before we dump

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1 this on you"?
2 MR. EPPICH: Object to the form
3 and characterization.
4 A. The nightly review or if
5 something came up on the nightly reviews,
6 then those would still be faxed if there was
7 a concern with an order. Those would be
8 addressed with the DEA and typically a DCM
9 would contact DEA to discuss that.
10 QUESTIONS BY MR. BOGLE:
11 Q. Yeah, but I guess what I'm
12 asking is different than that. So do you
13 recall at any point in time anyone at the
14 regulatory department at McKesson, when they
15 received that sort of feedback from DEA,
16 saying, "We can filter this down to what we
17 truly feel is suspicious rather than just
18 giving you something based on an algorithm"?
19 MR. EPPICH: Objection to the
20 form and the characterization.
21 Assumes facts not in evidence.
22 A. Again, it was filtered down by
23 providing the notations on the reports that
24 would be reviewed on the daily reports so
25 that they weren't getting this large volume;

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1 they were getting, you know, an isolated
2 customer that needed -- that was identified
3 that needed further review. So that reduced
4 the submissions. They still did, of course,
5 get the monthly file at the end of the month.
6 QUESTIONS BY MR. BOGLE:
7 Q. Okay. And so, again, to the
8 extent that that was done, that the orders
9 were individually flagged as suspicious
10 orders during this time frame, that would
11 have been documented, right?
12 MR. EPPICH: Object to the
13 form.
14 QUESTIONS BY MR. BOGLE:
15 Q. That wasn't done verbally.
16 MR. EPPICH: Object to the
17 form.
18 QUESTIONS BY MR. BOGLE:
19 Q. Was it?
20 A. I don't recall. It could have
21 been done both.
22 Q. Okay. But there was a
23 requirement specifically to document anything
24 that you deem a suspicious order report when
25 you sent it to the DEA, right?

<p style="text-align: right;">Page 186</p> <p>1 MR. EPPICH: Object to the</p> <p>2 form. Calls for a legal conclusion.</p> <p>3 A. I don't know what each of them</p> <p>4 did after they conducted that report to the</p> <p>5 DEA. I don't know what they kept on file.</p> <p>6 There was a notification log for</p> <p>7 documentation that they did maintain.</p> <p>8 QUESTIONS BY MR. BOGLE:</p> <p>9 Q. Okay. So, again, so to the</p> <p>10 extent that was done, there should be a log</p> <p>11 out there that shows it was done, right?</p> <p>12 MR. EPPICH: Object to the</p> <p>13 form. Calls for speculation.</p> <p>14 A. Part of the SOP was for them to</p> <p>15 fill out a log whenever they made contact to</p> <p>16 DEA.</p> <p>17 QUESTIONS BY MR. BOGLE:</p> <p>18 Q. Okay. So going back to the</p> <p>19 question I asked a couple minutes ago, in</p> <p>20 2007, the DEA specifically notified</p> <p>21 McKesson's regulatory department that the</p> <p>22 DU45 report, in its view, was not sufficient</p> <p>23 to satisfy the requirements of reporting</p> <p>24 suspicious orders, right?</p> <p>25 MR. EPPICH: Object to the</p>	<p style="text-align: right;">Page 188</p> <p>1 member of HDMA at this point in time, right?</p> <p>2 A. I was a member during this</p> <p>3 time.</p> <p>4 Q. Okay. What does HDMA stand</p> <p>5 for?</p> <p>6 A. Healthcare Distribution</p> <p>7 Management Association.</p> <p>8 Q. And again, that was y'all's</p> <p>9 trade association, right?</p> <p>10 A. That's correct.</p> <p>11 Q. Okay. So looking at this</p> <p>12 document, it notes that there are attendees</p> <p>13 at this meeting from both HDMA and DEA,</p> <p>14 right, at the top?</p> <p>15 A. Yes, that's what's stated.</p> <p>16 Q. And one of the DEA attendees is</p> <p>17 a person we talked about before, Mr. Mike</p> <p>18 Mapes, right?</p> <p>19 A. Yes, it is.</p> <p>20 Q. Okay. And if you go to the</p> <p>21 second page of this document, the top bullet</p> <p>22 point says: DEA also does not want to</p> <p>23 receive suspicious order reports that merely</p> <p>24 reflect volumes that went over a threshold;</p> <p>25 they wanted reports that are "true"</p>
<p style="text-align: right;">Page 187</p> <p>1 form. Calls for speculation.</p> <p>2 A. I don't recall the exact</p> <p>3 verbiage of what was requested.</p> <p>4 QUESTIONS BY MR. BOGLE:</p> <p>5 Q. Okay. Do you remember any</p> <p>6 discussion along those lines, that the DU45</p> <p>7 wasn't gonna cut it?</p> <p>8 MR. EPPICH: Object to the form</p> <p>9 and the characterization.</p> <p>10 A. I don't recall exactly what was</p> <p>11 requested.</p> <p>12 QUESTIONS BY MR. BOGLE:</p> <p>13 Q. Okay.</p> <p>14 (McKesson-Hilliard Exhibit 11</p> <p>15 was marked for identification.)</p> <p>16 QUESTIONS BY MR. BOGLE:</p> <p>17 Q. I'm going to hand you what I'm</p> <p>18 marking as Exhibit 1.1823, which is</p> <p>19 Exhibit 11 to your deposition, and that's</p> <p>20 MCKMDL00574906. And this is titled Summary</p> <p>21 of DEA-HDMA Meeting on Suspicious Orders,</p> <p>22 Meeting Date: September 7, 2007.</p> <p>23 Do you see that?</p> <p>24 A. Yes, I see that.</p> <p>25 Q. And you would have been a</p>	<p style="text-align: right;">Page 189</p> <p>1 suspicious orders. Similarly, they do not</p> <p>2 want to receive what they called "excessive</p> <p>3 purchase" reports which had been used in the</p> <p>4 past.</p> <p>5 Do you see that?</p> <p>6 A. I see that.</p> <p>7 Q. Okay. And were you aware of</p> <p>8 this discussion that went on with your trade</p> <p>9 association and DEA in September 2007?</p> <p>10 A. I recall that there was a</p> <p>11 meeting.</p> <p>12 Q. Okay. And so this information</p> <p>13 I just read to you about the DEA's</p> <p>14 expectations, that would have been conveyed</p> <p>15 to you and your regulatory team, right?</p> <p>16 MR. EPPICH: Object to the</p> <p>17 form. Misstates prior testimony.</p> <p>18 A. I don't recall specifically</p> <p>19 receiving it, but it is likely that I did.</p> <p>20 QUESTIONS BY MR. BOGLE:</p> <p>21 Q. Okay. And I think I can</p> <p>22 represent to you this came out of McKesson's</p> <p>23 files, so at least somebody at McKesson got</p> <p>24 this.</p> <p>25 And so what they're referencing</p>

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1 there, that they don't want to receive
 2 suspicious order reports that merely reflect
 3 volumes that went over a threshold, that's
 4 what a DU45 report is, right?
 5 MR. EPPICH: Object to the
 6 form. Foundation. Calls for
 7 speculation.
 8 A. It could be considered that,
 9 but I don't know what all the other members
 10 were considering their reports to be referred
 11 to as excessive purchase or what have you as
 12 well. So it's a generalization.
 13 QUESTIONS BY MR. BOGLE:
 14 Q. Yeah. I guess what I'm -- I'm
 15 not asking you to speak for other
 16 distributors. I don't think that's within
 17 your purview and I'm not asking you that.
 18 I'm asking you about McKesson.
 19 So the description that I just
 20 read for you from this bullet point would be
 21 consistent with the DU45 report, right?
 22 MR. EPPICH: Objection,
 23 foundation. Calls for speculation.
 24 Form.
 25 A. I'm not sure.

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1 QUESTIONS BY MR. BOGLE:
 2 Q. Okay. Well, when you received
 3 this information from your trade association
 4 from this meeting with the DEA, did the
 5 regulatory team at McKesson take this to mean
 6 that the DU45 was not good enough to show
 7 suspicious order reporting?
 8 MR. EPPICH: Objection, form.
 9 Calls for speculation. Misstates
 10 prior testimony.
 11 A. I don't recall exactly what was
 12 discussed with the regulatory department at
 13 that time. We were in the processes to
 14 develop new programs, LDMP, in 2007, which
 15 was conducted in addition to the DU45.
 16 So the DU45, I don't remember
 17 when it stopped being completely submitted,
 18 but it was still being submitted and then we
 19 were developing additional programs.
 20 QUESTIONS BY MR. BOGLE:
 21 Q. Okay. So I guess my question
 22 was, is it your -- after receiving this
 23 information, did the regulatory department at
 24 McKesson conclude that the DU45 report was
 25 not going to be sufficient to report

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1 suspicious orders?
 2 MR. EPPICH: Objection to the
 3 form.
 4 QUESTIONS BY MR. BOGLE:
 5 Q. Yes or no?
 6 MR. EPPICH: Foundation.
 7 Misstates prior testimony.
 8 A. I don't recall what decision
 9 was made after receiving this document.
 10 QUESTIONS BY MR. BOGLE:
 11 Q. Okay.
 12 A. What I can tell you, as I
 13 already have, is we were in development of
 14 enhanced programs.
 15 Q. Okay. Well, as you read this
 16 information today, as you sit here today,
 17 having worked at McKesson as a director of
 18 regulatory affairs for nearly 20 years, do
 19 you understand this language I read to you to
 20 mean in plain terms that reports like the
 21 DU45 report were not going to be sufficient
 22 to report suspicious orders?
 23 MR. EPPICH: Objection to the
 24 form. Foundation.
 25 A. Again, I don't recall what was

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1 decided at this point in time when we
 2 received this document.
 3 QUESTIONS BY MR. BOGLE:
 4 Q. I'm asking you as you read it
 5 today, not what was decided at the time.
 6 MR. EPPICH: Same objections.
 7 A. I've been out of it for a long
 8 time. I'm not sure what correlation that
 9 would have.
 10 QUESTIONS BY MR. BOGLE:
 11 Q. Okay. So you don't have an
 12 opinion one way or the other whether the
 13 bullet point we read would indicate to you
 14 today that the DU45 like we just looked at is
 15 not going to be sufficient to report
 16 suspicious orders? Is that your testimony?
 17 MR. EPPICH: Objection. Asked
 18 and answered. Form.
 19 A. We enhanced what we were
 20 providing by developing new programs. We
 21 continued to supply this in addition.
 22 QUESTIONS BY MR. BOGLE:
 23 Q. Yeah, that's just not what I
 24 asked you. So we'll get to what you did on
 25 the LDMP and the CSMP, I promise you that.

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1 What I'm asking you right now
 2 is about the DU45. As you sit here reading
 3 this today, having worked as a director of
 4 regulatory affairs for 20 years and just
 5 concluded that practice two years ago, do you
 6 read this as you sit here today as being a
 7 clear indication that the DU45 report was not
 8 sufficient to report suspicious orders?
 9 MR. EPPICH: Objection to the
 10 form; asked and answered, calls for a
 11 legal conclusion.
 12 A. I don't know.
 13 QUESTIONS BY MR. BOGLE:
 14 Q. You don't know. Okay.
 15 You've seen -- strike that.
 16 You've been involved in e-mail
 17 discussions while you were at McKesson where
 18 conclusions by other members of the
 19 regulatory team that you were involved in
 20 were that the DU45 was not a suspicious order
 21 report, right?
 22 MR. EPPICH: Objection to the
 23 form. Calls for speculation.
 24 QUESTIONS BY MR. BOGLE:
 25 Q. Do you recall those

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1 discussions?
 2 A. I don't recall offhand.
 3 Q. Okay. I'll hand you what I'm
 4 marking as Exhibit 12, which is 1.1667, and
 5 that's MCKMDL00510747.
 6 (McKesson-Hilliard Exhibit 12
 7 was marked for identification.)
 8 QUESTIONS BY MR. BOGLE:
 9 Q. All right. And we're going to
 10 walk through from back to front here, but
 11 just starting at the front, you see that top
 12 e-mail there is one that you're copied on,
 13 right?
 14 A. Yes, I am copied on it.
 15 Q. And you understand sort of how
 16 e-mails work; once you appear on this e-mail,
 17 the ones prior to it, you would also have
 18 been able to view, right?
 19 A. Okay.
 20 Q. So let's start back at the
 21 first e-mail, page .6. All right. So the
 22 bottom e-mail there is from a Tyra Williams
 23 to a Craig Vanderburg, subject: Variance and
 24 Suspicious Reports, dated December 16, 2010.
 25 Do you see that?

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1 A. I see that.
 2 Q. And the statement there is:
 3 Craig, please do not forget that these
 4 reports must be sent to the State. We have
 5 not sent the reports for the last 6 months.
 6 Do you see that reference?
 7 A. I see that.
 8 Q. Craig Vanderburg, would he have
 9 been a distribution center manager at this
 10 time?
 11 A. That's my recollection.
 12 Q. All right. So let's now flip
 13 over to page .5. I'm looking at the e-mail
 14 at the top there from Tom McDonald,
 15 December 16, 2010, same title. Mr. McDonald,
 16 he was in the regulatory department at that
 17 time, right?
 18 A. Yes, he was.
 19 Q. He was another director of
 20 regulatory affairs, right?
 21 A. Yes, he was.
 22 Q. Okay. He says there: I don't
 23 believe you have identified a suspicious
 24 order or customer within the last six months,
 25 have you? It is still part of our process to

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1 report all suspicious orders to the DEA and
 2 to the state board when they are discovered.
 3 Our current process better identifies
 4 suspicious orders rather than orders of
 5 interest. One man's opinion.
 6 Do you see that?
 7 A. Yes, I see that.
 8 Q. Okay. And then finally, going
 9 to the e-mail back on the first page by Dave
 10 Gustin -- now, Dave Gustin is another
 11 director of regulatory affairs at the time
 12 the e-mail is sent, February 4, 2011, right?
 13 A. That is correct.
 14 Q. Okay. And as we talked about a
 15 minute ago, you're involved in the e-mail
 16 chain at this point as being copied, right?
 17 A. That's correct.
 18 Q. Okay. Here, in the second
 19 paragraph, he says: It is my opinion that
 20 the previous reports were not the exclusive
 21 and proper response to this regulation.
 22 And if you look above, the
 23 regulation he's citing to is the one about --
 24 from the Controlled Substances Act about
 25 reporting suspicious orders, right?

<p style="text-align: right;">Page 198</p> <p>1 A. That's what's listed, yes.</p> <p>2 Q. Okay. Then he says: We have</p> <p>3 an obligation to report "suspicious orders."</p> <p>4 With no clear definition of what constitutes</p> <p>5 a suspicious order we must rely on our own</p> <p>6 judgment as to what it is. If we report</p> <p>7 anything we believe to be truly suspicious we</p> <p>8 will be meeting the spirit and letter of the</p> <p>9 regulation. Simply reporting</p> <p>10 larger-than-usual orders does not when there</p> <p>11 are so many plausible and routine reasons for</p> <p>12 orders to be "larger than normal."</p> <p>13 And then he lists some reasons.</p> <p>14 I would wait until someone</p> <p>15 misses the report before seeking someone out</p> <p>16 to give them something that I do not agree</p> <p>17 meets their needs or requirements.</p> <p>18 Do you see that?</p> <p>19 A. Yes, I see that.</p> <p>20 Q. And a report that simply</p> <p>21 orders -- reports orders that are larger than</p> <p>22 usual, that's exactly what the DU45 report</p> <p>23 is, right?</p> <p>24 MR. EPPICH: Objection;</p> <p>25 foundation, calls for speculation.</p>	<p style="text-align: right;">Page 200</p> <p>1 that's probably what he's alluding to.</p> <p>2 QUESTIONS BY MR. BOGLE:</p> <p>3 Q. Yeah. I'm just asking whether</p> <p>4 you agree or disagree that simply reporting</p> <p>5 larger-than-usual orders does not meet the</p> <p>6 spirit and letter of the suspicious order</p> <p>7 reporting regulation. Agree or disagree?</p> <p>8 MR. EPPICH: Object to the</p> <p>9 form; asked and answered.</p> <p>10 A. Yeah. Again, I'm not familiar</p> <p>11 with the contents -- the context of all of</p> <p>12 the communications that took place here. I</p> <p>13 know I was copied on it but I don't recall</p> <p>14 the specific e-mail. There are other factors</p> <p>15 that go into orders that are larger than</p> <p>16 normal.</p> <p>17 QUESTIONS BY MR. BOGLE:</p> <p>18 Q. Okay. You've read the e-mail</p> <p>19 here today. You were copied on it back in</p> <p>20 2011. So as you read it here today, the</p> <p>21 premise being submitting orders that are</p> <p>22 larger than usual, does that or does that</p> <p>23 not, in your view, meet the spirit and letter</p> <p>24 of the regulation requiring the reporting of</p> <p>25 suspicious orders?</p>
<p style="text-align: right;">Page 199</p> <p>1 A. They're orders that exceed the</p> <p>2 threshold based on the parameters of that</p> <p>3 report.</p> <p>4 QUESTIONS BY MR. BOGLE:</p> <p>5 Q. Right. So what's usual in that</p> <p>6 context is defined by the prior 12 months'</p> <p>7 sales, right, for the DU45?</p> <p>8 MR. EPPICH: Objection, form.</p> <p>9 Foundation.</p> <p>10 A. It's an average.</p> <p>11 QUESTIONS BY MR. BOGLE:</p> <p>12 Q. Right. And then again, to</p> <p>13 appear on the report you have to go three</p> <p>14 times above that average, right?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. And so let me ask you</p> <p>17 this: Do you agree or disagree that simply</p> <p>18 reporting larger-than-usual orders does not</p> <p>19 meet the spirit of the regulation about</p> <p>20 suspicious order reporting?</p> <p>21 MR. EPPICH: Object to the</p> <p>22 form.</p> <p>23 A. I don't know what all Dave is</p> <p>24 trying to communicate here. There are other</p> <p>25 factors that go into reviewing orders and</p>	<p style="text-align: right;">Page 201</p> <p>1 MR. EPPICH: Object to form;</p> <p>2 asked and answered.</p> <p>3 QUESTIONS BY MR. BOGLE:</p> <p>4 Q. What's your opinion on that</p> <p>5 today?</p> <p>6 MR. EPPICH: Calls for a legal</p> <p>7 conclusion.</p> <p>8 A. I don't know what the context</p> <p>9 of this e-mail was, so I don't have all the</p> <p>10 facts to supply an answer.</p> <p>11 QUESTIONS BY MR. BOGLE:</p> <p>12 Q. Okay. Well, do you want to</p> <p>13 look at the -- I'm happy to give you whatever</p> <p>14 time you need to look at the full e-mail</p> <p>15 chain. I'm not trying to take anything out</p> <p>16 of context for you here. Feel free. Let's</p> <p>17 do that.</p> <p>18 Let's take -- take a minute.</p> <p>19 It's, I think, seven pages or eight pages --</p> <p>20 six pages. Let me know when you're done</p> <p>21 reading the six pages, but that's my question</p> <p>22 that I'm going to ask you again. Let me know</p> <p>23 when you're ready.</p> <p>24 (Document review by witness.)</p> <p>25 A. Restate your question.</p>

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1 QUESTIONS BY MR. BOGLE:
 2 Q. Yep. So do you agree or
 3 disagree that simply reporting
 4 larger-than-usual orders does not meet the
 5 suspicious order reporting requirements of
 6 the Controlled Substances Act?
 7 MR. EPPICH: Objection to the
 8 form. Foundation. Calls for a legal
 9 conclusion. Asked and answered.
 10 A. We were providing information
 11 based on what we believed complied with the
 12 CSA and what came out of the Suspicious Order
 13 Task Force, and other additional information
 14 is provided to the DEA to supplement that,
 15 such as the notations on the report nightly.
 16 So there is more that goes
 17 along with that than just this one report
 18 that has higher-than-threshold levels of
 19 transactions listed on it.
 20 MR. BOGLE: Move to strike as
 21 nonresponsive.
 22 QUESTIONS BY MR. BOGLE:
 23 Q. Let me reask my question
 24 because I think it's very straightforward.
 25 My question is, simply: Do you

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1 agree or disagree that, standing alone,
 2 providing a report that simply lists
 3 larger-than-usual orders does not comply with
 4 the suspicious order reporting requirements
 5 of the Controlled Substances Act?
 6 MR. EPPICH: Object to the
 7 form.
 8 QUESTIONS BY MR. BOGLE:
 9 Q. I'm not asking about additional
 10 stuff. I'm asking whether you think that
 11 alone is good enough to meet that regulation.
 12 Yes or no?
 13 MR. EPPICH: Object to form;
 14 asked and answered, calls for a legal
 15 conclusion.
 16 QUESTIONS BY MR. BOGLE:
 17 Q. We'll talk about the rest of it
 18 later, I promise you.
 19 MR. EPPICH: He's answered this
 20 question three times now.
 21 MR. BOGLE: He hasn't come
 22 close. I mean, I'd love it if he had.
 23 MR. EPPICH: You're looking for
 24 a yes-or-no answer. He's given you
 25 the answer. It may not be the answer

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1 you want --
 2 MR. BOGLE: He hasn't said yes
 3 or no.
 4 MR. EPPICH: -- but he has
 5 answered the question.
 6 QUESTIONS BY MR. BOGLE:
 7 Q. Listen, here's what we can do.
 8 You can say yes or no and then provide
 9 whatever response thereafter you want.
 10 MR. EPPICH: I said you're
 11 looking for a yes-or-no answer but
 12 he's not providing that to you.
 13 That's why you're upset, Brandon.
 14 MR. BOGLE: Right, because I
 15 just want him to answer my question.
 16 That does upset me, you're right.
 17 You're right. That's frustrating.
 18 MR. EPPICH: I'll allow him to
 19 answer your question again.
 20 QUESTIONS BY MR. BOGLE:
 21 Q. Can you just answer -- I mean,
 22 I think it's a very straightforward question.
 23 A. We provide the report that was
 24 based off the Suspicious Order Task Force
 25 report that we believe complied with the CSA

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1 requirements, and in addition, we developed
 2 additional reporting tools to provide better
 3 notifications to DEA.
 4 Q. Okay. So the DU45 by itself,
 5 would you agree, was not sufficient to
 6 satisfy the suspicious order reporting
 7 requirements of the CSA?
 8 MR. EPPICH: Objection, calls
 9 for a legal conclusion. Form,
 10 foundation, and asked and answered.
 11 Six times now.
 12 A. We provided the information for
 13 the DU45 based on the Suspicious Order Task
 14 Force that we believe complied with the CSA.
 15 We supplemented that with additional
 16 information that would give better
 17 information to the DEA through these reports
 18 and additional reporting tools.
 19 MR. BOGLE: Move to strike as
 20 nonresponsive.
 21 QUESTIONS BY MR. BOGLE:
 22 Q. Okay. Let me ask it a
 23 different way. You've read the six pages of
 24 e-mails, correct?
 25 A. That's correct.

<p style="text-align: right;">Page 206</p> <p>1 Q. Okay. And you know that they 2 were specifically talking about the DU45 3 report, right? 4 MR. EPPICH: Objection, 5 foundation. 6 QUESTIONS BY MR. BOGLE: 7 Q. It's referenced by name, isn't 8 it? 9 MR. EPPICH: Objection, 10 foundation. 11 A. I believe it was stated in the 12 e-mail trail. 13 QUESTIONS BY MR. BOGLE: 14 Q. All right. So now that you 15 have a chance to review the full context of 16 this entire e-mail chain, do you agree or 17 disagree with Mr. Gustin's following 18 statement: Simply reporting 19 larger-than-usual orders does not, when there 20 are so many plausible and routine reasons for 21 orders to be larger than normal -- and "does 22 not," he's referring to meeting the spirit 23 and letter of the regulation for reporting 24 suspicious orders. 25 Agree or disagree or no opinion</p>	<p style="text-align: right;">Page 208</p> <p>1 the e-mail. 2 MR. BOGLE: Okay. I'm going to 3 something else, so if you want to take 4 it now or I can plug along if you 5 want. 6 MR. EPPICH: That's fine, let's 7 take a lunch. 8 THE VIDEOGRAPHER: Off the 9 record at 12:31. 10 (Recess taken, 12:31 p.m. to 11 1:17 p.m.) 12 THE VIDEOGRAPHER: Stand by. 13 The time is 1:17 p.m. Back on the 14 record, beginning of File 4. 15 QUESTIONS BY MR. BOGLE: 16 Q. All right, Mr. Hilliard. Just 17 to reorient ourselves here, earlier in the 18 deposition, you recall discussing with me the 19 DEA's investigation of the Lakeland 20 distribution center regarding distribution of 21 hydrocodone to seven Florida pharmacies? 22 A. That's correct. 23 Q. Okay. And you're aware after 24 that investigation, the DEA also began 25 investigating some other distribution centers</p>
<p style="text-align: right;">Page 207</p> <p>1 on Mr. Gustin's statement there? 2 MR. EPPICH: Objection to the 3 form; calls for a legal conclusion. 4 A. I don't have an opinion on 5 his -- on his statement. 6 QUESTIONS BY MR. BOGLE: 7 Q. Okay. And I looked to see if 8 you responded with disagreement to the 9 statement. I didn't find anything. Do you 10 have any specific recollection of you 11 disagreeing with his statement here? 12 MR. EPPICH: Objection to the 13 form. Calls for speculation. 14 A. I don't recall the specifics of 15 this e-mail. 16 QUESTIONS BY MR. BOGLE: 17 Q. Okay. Again, I think my 18 question is different than that. 19 Do you have a specific 20 recollection of disagreeing with his e-mail 21 in writing? 22 MR. EPPICH: Objection to the 23 form. 24 A. I do not have a recollection of 25 reviewing this e-mail or making a response to</p>	<p style="text-align: right;">Page 209</p> <p>1 within McKesson as to their distribution of 2 opioids? 3 MR. EPPICH: Object to the 4 form. 5 A. Yes. There was additional 6 investigations. 7 QUESTIONS BY MR. BOGLE: 8 Q. Okay. And ultimately those 9 investigations culminated in McKesson 10 entering into a settlement agreement with the 11 DEA in 2008, right? 12 MR. EPPICH: Object to the 13 form. 14 A. There was a settlement 15 agreement in 2008. 16 QUESTIONS BY MR. BOGLE: 17 Q. Okay. And you're aware that 18 occurred, right? That a settlement occurred 19 in 2008? 20 A. Yes, I am. 21 Q. Okay. And you're aware that 22 settlement pertained to allegations from the 23 DEA that McKesson violated the Controlled 24 Substances Act in distributing opioids from 25 several of its distribution centers, right?</p>

<p style="text-align: right;">Page 210</p> <p>1 A. Correct.</p> <p>2 Q. Okay. Have you seen the</p> <p>3 settlement agreement itself?</p> <p>4 A. I have seen it at one time.</p> <p>5 Q. Okay. All right. I'm going to</p> <p>6 hand you what I'm marking as Exhibit 13,</p> <p>7 which is also 1.889, and that's</p> <p>8 MCKMDL00337001.</p> <p>9 (McKesson-Hilliard Exhibit 13</p> <p>10 was marked for identification.)</p> <p>11 QUESTIONS BY MR. BOGLE:</p> <p>12 Q. Here you go, sir.</p> <p>13 Okay. What I've just handed</p> <p>14 you, Mr. Hilliard, as Exhibit 13 is titled at</p> <p>15 the top Settlement and Release Agreement and</p> <p>16 Administrative Memorandum Agreement dated in</p> <p>17 the first paragraph May 2nd, 2008.</p> <p>18 Do you see that?</p> <p>19 A. Yes, I see that.</p> <p>20 Q. Okay. And do you recognize</p> <p>21 this to be the settlement agreement we just</p> <p>22 referenced from 2008?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And if we'd go</p> <p>25 specifically to -- let's see, my page numbers</p>	<p style="text-align: right;">Page 212</p> <p>1 McKesson-Landover sold approximately</p> <p>2 3 million dosage units of hydrocodone to</p> <p>3 NewCare Pharmacy in Baltimore, and failed to</p> <p>4 report these sales as suspicious orders to</p> <p>5 DEA when discovered, as required by and in</p> <p>6 violation of -- and then it lists the C.F.R.</p> <p>7 and the U.S.C.</p> <p>8 And then it says: Further,</p> <p>9 from August 2006 to February 2007,</p> <p>10 McKesson-Landover sold large quantities of</p> <p>11 phentermine-based products to Smeeta Pharmacy</p> <p>12 in Highland, Maryland, and failed to report</p> <p>13 these sales as suspicious orders to DEA when</p> <p>14 discovered, as required by and in violation</p> <p>15 of -- and again it lists the statutes.</p> <p>16 Do you see where I'm reading</p> <p>17 there?</p> <p>18 A. I see that.</p> <p>19 Q. Okay. Were you involved at all</p> <p>20 in investigating whether the allegations the</p> <p>21 DEA was making here were accurate or not?</p> <p>22 A. Not that I recall.</p> <p>23 Q. Okay. Then if you see in</p> <p>24 section B, and I wasn't going to read this</p> <p>25 whole section but you can look at it here for</p>
<p style="text-align: right;">Page 211</p> <p>1 are different here. There's an Appendix B</p> <p>2 about halfway through the document that</p> <p>3 starts the actual settlement agreement. Do</p> <p>4 you see where I'm at there? Sorry, my page</p> <p>5 numbers don't match yours on this so I can't</p> <p>6 give you a specific number. I'm sorry, I</p> <p>7 would if I could. For reason -- but that's</p> <p>8 what the page looks like right there.</p> <p>9 MR. EPPICH: I think it's on</p> <p>10 Bates 337012.</p> <p>11 QUESTIONS BY MR. BOGLE:</p> <p>12 Q. It says Appendix B at the top</p> <p>13 left, Settlement Agreement at the top middle.</p> <p>14 See where I'm at?</p> <p>15 A. Found it.</p> <p>16 Q. All right. So this starts the</p> <p>17 actual settlement agreement itself. So I</p> <p>18 want to go to the next page that talks about</p> <p>19 the covered conduct in the agreement, which</p> <p>20 is number 8 in the middle of the page.</p> <p>21 Do you see where I'm at?</p> <p>22 A. Yes, I do.</p> <p>23 Q. Okay. And A there says:</p> <p>24 Within the District of Maryland: From</p> <p>25 January 2005 through October 2006,</p>	<p style="text-align: right;">Page 213</p> <p>1 yourself, this talks about the conduct that</p> <p>2 we actually covered for the seven</p> <p>3 pharmacies -- seven Florida pharmacies that</p> <p>4 were handled by the Lakeland distribution</p> <p>5 center, right?</p> <p>6 A. Yes. It's listed here.</p> <p>7 Q. And that's the same conduct we</p> <p>8 talked about before, right? That's what they</p> <p>9 discuss here.</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And then in letter C:</p> <p>12 Within the Southern District of Texas, it</p> <p>13 says: From February to September 2007,</p> <p>14 McKesson-Conroe sold approximately 2.6</p> <p>15 million dosage units of hydrocodone to</p> <p>16 Mercury Drive Pharmacy and Maswoswe's</p> <p>17 Alternative Pharmacy and failed to report</p> <p>18 these sales as suspicious orders to DEA when</p> <p>19 discovered, as required by and in violation</p> <p>20 of -- and again it lists the statutes.</p> <p>21 You see that there?</p> <p>22 A. I see that.</p> <p>23 Q. And on the next page, it</p> <p>24 continues with letters D, E and F. Letters D</p> <p>25 involve allegations of large quantities of</p>

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1 hydrocodone sent to three Colorado pharmacies
2 out of the McKesson-Aurora distribution
3 center from September 2005 to November 2007,
4 right?

5 A. I see that.

6 Q. E involves McKesson-Salt Lake
7 and distribution of 824,000 units of
8 hydrocodone, oxycodone, fentanyl and
9 methadone to the Blackfeet Clinic in
10 Browning, Montana from January 2005 to
11 October 2007.

12 Do you see that?

13 A. I see that.

14 Q. Okay. And then finally, there
15 is, from McKesson-West Sacramento,
16 allegations of theft or significant loss of
17 controlled substances on 28 separate
18 occasions that were not reported timely to
19 the DEA.

20 Do you see that?

21 A. I see that.

22 Q. Okay. And you know that for
23 this covered conduct, there was a fine paid
24 of \$13.25 million by McKesson, right?

25 A. Correct.

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1 Q. Okay. And as a result of these
2 investigations by DEA in 2005 and 2006, in
3 addition to entering the settlement
4 agreement, McKesson modified its Suspicious
5 Order Monitoring Program to shift to the
6 Lifestyle Drug Monitoring Program, right?

7 MR. EPPICH: Object to the
8 form. Calls for speculation.

9 A. The Lifestyle Drug Monitoring
10 Program was developed in the 2007 time frame.

11 QUESTIONS BY MR. BOGLE:

12 Q. Okay. We'll take a look at a
13 few things related to the LDMP -- you're okay
14 with me calling it LDMP?

15 A. Please.

16 Q. Okay. I think we're talking
17 about the same thing there.

18 All right. So I'm going to
19 hand you what I'm marking as Exhibit 1.1830,
20 which is Exhibit 14 to your deposition, and
21 that is, for those keeping track of these
22 things, MCKMDL00403340.

23 (McKesson-Hilliard Exhibit 14
24 was marked for identification.)

25 --oOo--

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1 QUESTIONS BY MR. BOGLE:

2 Q. There's yours, sir, and there's
3 yours.

4 All right. I've handed you a
5 PowerPoint deck titled Lifestyle Drugs &
6 Internet Pharmacies.

7 Do you see that?

8 A. I see that.

9 Q. Okay. And it's noted to be, in
10 the slide at the far right there, it says
11 National Operations Conference 2007.

12 Do you see that reference?

13 A. I see that.

14 Q. Okay. Have you seen this slide
15 deck before?

16 A. I have seen it before.

17 Q. Okay. And it's noted to be
18 created by Donald Walker, who we've talked
19 about a little bit earlier, right?

20 A. That's correct.

21 Q. Okay. And if you go here to
22 page .3, there's a slide on this PowerPoint
23 deck titled Public Health Issues.

24 Do you see where I'm at?

25 A. I see that.

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1 Q. Okay. The first bullet point
2 there says: Abuse of prescription drugs has
3 risen 66% since 2000.

4 Do you see that reference?

5 A. I see it.

6 Q. And the third bullet point
7 says: Opioid painkillers kill more than
8 cocaine and heroin combined.

9 Do you see that as well?

10 A. I see that.

11 Q. Okay. Do you know in what
12 context this information was presented, like
13 where it was presented?

14 A. It was an operations
15 conference. I don't recall if I was there or
16 not. I was not always invited to them, but I
17 could have been there.

18 Q. And then if we go to the next
19 page, page .4, it says DEA Focus is the title
20 of this slide.

21 Do you see where I'm at?

22 A. I see that.

23 Q. Okay. And it says -- you see
24 where it says, "DEA expects"?

25 A. I see it.

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1 Q. Under that it says: We "know
2 our customers."
3 Do you see that reference?
4 A. I see that.
5 Q. The Know Your Customer tag line
6 here, are you familiar with what that refers
7 to?
8 A. I am.
9 Q. Okay. What does it refer to?
10 A. Understanding our customers'
11 business.
12 Q. Okay. The second bullet point
13 says: Wholesalers accountable for
14 controlling quantities shipped.
15 Do you see that reference?
16 A. I see that.
17 Q. And the last bullet point says:
18 5,000 dose units is "average."
19 Do you see where that's at?
20 A. I see that.
21 Q. Okay. The 5,000 dosage units
22 as average is in reference to the DEA's
23 expectation that the average dosage unit for
24 controlled substances would be 5,000 for a
25 pharmacy at that point in time, right?

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1 MR. EPPICH: Objection,
2 foundation.
3 A. I'm not sure what the -- what
4 Don is trying to convey on what is average
5 from this slide.
6 QUESTIONS BY MR. BOGLE:
7 Q. Okay. Do you have any
8 recollection of the 5,000 number being
9 discussed around this time frame as an
10 average for controlled substances purchases
11 for pharmacies?
12 MR. EPPICH: Object to the
13 form.
14 A. There was comments of the 5,000
15 dosage units for the -- for lifestyle drug
16 controlled substances. That's the only
17 reference that I remember for this quantity.
18 QUESTIONS BY MR. BOGLE:
19 Q. Okay. And those would be --
20 let me see if I can find it, one second --
21 oxycodone, hydrocodone, phentermine and
22 alprazolam, right?
23 A. That sounds correct.
24 Q. And those are the four drugs
25 that were included in the LDMP, right?

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1 A. That's correct.
2 Q. Okay. So now if you go to
3 page .7 in this slide deck, this actually
4 refers to the LDMP and it says "Starts
5 May 1st."
6 Would that be May 1st of 2007?
7 Does that sound right to you?
8 A. That sounds correct.
9 Q. Okay. And it says, "Focus on
10 four drugs," which again, I think are the
11 four drugs we just talked about, right?
12 A. Right.
13 MR. EPPICH: Objection,
14 foundation.
15 QUESTIONS BY MR. BOGLE:
16 Q. And it says: Establish
17 threshold for excessive quantities - 8,000
18 dose units.
19 Do you see that reference?
20 A. I see the reference.
21 Q. Okay. Now, I think we talked
22 about at the beginning of the deposition that
23 you were actually the drafter of the LDMP,
24 right?
25 A. I helped to draft it.

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1 Q. Helped draft it. Okay.
2 Who helped you draft it?
3 A. I believe Tracy was involved
4 with it as well.
5 Q. Jonas?
6 A. Yeah, sorry, Tracy Jonas. But
7 I don't recall specifically.
8 Q. Okay. Well, let me ask you
9 this: Since you were involved in the
10 drafting of the LDMP, why was 8,000 dose
11 units set as the threshold for excessive
12 quantities in the LDMP? How was that number
13 chosen?
14 MR. EPPICH: Object to the
15 form.
16 A. I don't recall how that number
17 came about. This would have been through
18 discussions with Don Walker.
19 QUESTIONS BY MR. BOGLE:
20 Q. Okay. Because we just saw a
21 minute ago another slide where DEA is noting
22 5,000 dosage units to be average. So why not
23 just set it at 5,000?
24 MR. EPPICH: Object to the
25 form; foundation.

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1 A. Again, I don't recall how that
2 number came about. This would have gone
3 through a directive with Don Walker.
4 QUESTIONS BY MR. BOGLE:
5 Q. Okay. Do you recall any
6 specific discussions about, "Hey, let's pick
7 8,000 rather than five"? Were you involved
8 in any such discussions?
9 A. I may have been. I don't
10 recall.
11 Q. But we can agree that 8,000
12 dosage units was the number selected for the
13 LDMP, right --
14 MR. EPPICH: Object to the
15 form.
16 QUESTIONS BY MR. BOGLE:
17 Q. -- for these four drugs?
18 A. For the four drugs.
19 MR. EPPICH: Object to the
20 form.
21 QUESTIONS BY MR. BOGLE:
22 Q. And then the additional bullet
23 point here says, below that: Thorough due
24 diligence of customers exceeding threshold.
25 And that was what was intended

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1 to happen under that program, right?
2 MR. EPPICH: Object,
3 foundation.
4 A. That's my recollection.
5 QUESTIONS BY MR. BOGLE:
6 Q. Okay. Then it says below that:
7 Reducing orders to customers.
8 So the plan under the LDMP was
9 to make a concerted effort to reduce orders
10 to customers. Is that fair?
11 MR. EPPICH: Objection,
12 foundation.
13 QUESTIONS BY MR. BOGLE:
14 Q. For these four drugs.
15 A. I'm not entirely sure what
16 Don's conveying from the reducing orders to
17 customers.
18 Q. Okay. The last bullet point
19 says: Documentation and reporting to DEA.
20 Do you have an understanding of
21 what's being referred to there as far as
22 reporting to DEA?
23 A. Again, I'm not real sure which
24 part Don is referring to here on the reports.
25 Q. Okay. Now, the LDMP was only

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1 around for approximately a year, right?
2 A. Yes, that is correct.
3 Q. Okay. Why did you guys get rid
4 of it after a year?
5 MR. EPPICH: Object to the
6 form.
7 A. We were developing better
8 analytical tools.
9 QUESTIONS BY MR. BOGLE:
10 Q. Okay. Were any of those
11 analytical tools not available in 2007?
12 A. My recollection is yes. I
13 mean, there was reports and analytics that --
14 from system development that had to be done
15 for the CSMP process.
16 Q. Okay. What specific reports
17 are you referring to?
18 A. Again, it would be analytical
19 tool -- analytical reporting, so I can't
20 specifically tell you what the names of them
21 are. I don't remember offhand.
22 Q. Okay. You were actually
23 involved in auditing the Lifestyle Drug
24 Monitoring Program in 2007, right?
25 A. I don't recall specifically

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1 what was in the audit at that time, but it's
2 possible.
3 Q. Okay. And you recall that
4 during that 2007 audit process, there were
5 some significant shortcomings found with the
6 program, right?
7 MR. EPPICH: Objection, form.
8 A. I don't recall.
9 MR. EPPICH: Assumes facts not
10 in evidence.
11 QUESTIONS BY MR. BOGLE:
12 Q. Okay. I'm going to hand you
13 what I'm marking as Exhibit 15, which is
14 1.1887, MCKMDL00591949.
15 (McKesson-Hilliard Exhibit 15
16 was marked for identification.)
17 QUESTIONS BY MR. BOGLE:
18 Q. You'll see this document is
19 titled Lifestyle Drug Program, McKesson U.S.
20 Pharma - DEA Licensure Audit.
21 Do you see that?
22 A. I see that.
23 Q. Okay. And you're noted to be
24 the process owner here, right?
25 A. Yes, I am listed here.

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1 Q. What does "process owner" mean?

2 A. The person to discuss the

3 processes around the LDMP.

4 Q. Okay. And the last revised

5 date noted on this document is July 27, 2007.

6 Do you see that?

7 A. Yes, I do.

8 Q. Okay. In the first line there,

9 in Overview, it says: The Lifestyle Drug

10 Program is a response to the DEA's

11 requirement to monitor the ordering/sales of

12 DEA identified "Lifestyle Drugs" and to "know

13 our customer."

14 Do you see that reference?

15 A. I see it.

16 Q. It says: A legitimate

17 patient/doctor relationship is required to

18 dispense all drugs containing any of the

19 substances on the DEA Lifestyle Drug list.

20 The need for a Lifestyle Drug Monitoring

21 Program originated from issues with

22 illegitimate internet pharmacies.

23 Do you see where I'm reading

24 there?

25 A. I do.

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1 Q. And then the next paragraph

2 references a roll-out of the program in

3 May 2007.

4 Do you see that reference?

5 A. I see that.

6 Q. And let's go to the second page

7 of the document, please. Do you see there

8 there's a Section 1.1, the Daily Dosage

9 Summary Report?

10 Do you see that section?

11 A. I see that.

12 Q. And the Daily Dosage Summary

13 Report was the report utilized under the LDMP

14 to assess when a customer exceeded the 8,000

15 unit threshold, right?

16 A. That's my recollection.

17 Q. Okay. And as it's noted here,

18 the 8,000 threshold was based on doses rather

19 than ordering units, right?

20 A. That's what's stated, yes.

21 Q. Meaning for each pill counts

22 one, right?

23 A. Correct.

24 Q. Is that a fair statement?

25 A. Fair.

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1 Q. Okay. So in the last two

2 sentences on this page, it says: The sales

3 quantity is measured by dose rather than

4 ordering unit and the current volume

5 threshold is 8,000 doses. The threshold was

6 determined by the Regulatory Department.

7 Do you see that reference?

8 A. I see that.

9 Q. Okay. And the regulatory

10 department at that time -- there's actually a

11 chart there above -- is you, Don Walker,

12 Bruce Russell, right?

13 A. That's correct.

14 Q. Okay. And as we turn to the

15 next page, it says, on the top there, first

16 line: Because the list of products being

17 monitored was determined by Business

18 Intelligence, it is possible not all products

19 containing one of the generic ingredients

20 were included. It is possible that the

21 controlled substances being monitored are

22 being underreported.

23 Do you see that?

24 A. I see that.

25 Q. Okay. Do you recall that

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1 finding --

2 A. I do not.

3 Q. -- being made?

4 A. I do not.

5 Q. Okay. Was any further

6 investigation done as to whether in fact

7 there was underreporting under the LDMP?

8 A. There may have been, but I

9 don't recall it.

10 Q. Okay. That's a significant

11 issue, though, right? If there is

12 underreporting occurring, then the thresholds

13 wouldn't be -- the determination of when

14 somebody met a threshold wouldn't be

15 accurate, right?

16 MR. EPPICH: Objection,

17 foundation. Calls for speculation.

18 A. We want accurate data, so...

19 QUESTIONS BY MR. BOGLE:

20 Q. Right. And if there's

21 underreporting occurring, the data wouldn't

22 be accurate, right?

23 MR. EPPICH: Objection,

24 foundation. Calls for speculation.

25 A. Yeah. It's a possibility.

<p style="text-align: right;">Page 230</p> <p>1 QUESTIONS BY MR. BOGLE:</p> <p>2 Q. Right. And that's why it's</p> <p>3 listed here as a possibility, right?</p> <p>4 MR. EPPICH: Objection,</p> <p>5 foundation.</p> <p>6 A. Yeah. That's what the auditor</p> <p>7 states.</p> <p>8 QUESTIONS BY MR. BOGLE:</p> <p>9 Q. Okay. And if you'd go to the</p> <p>10 third paragraph on this page, it says:</p> <p>11 Although McKesson typically directs customers</p> <p>12 to order from only one DC, it's possible for</p> <p>13 a customer to order product from multiple</p> <p>14 DCs. Since the Daily Dosage Summary Report</p> <p>15 is organized by DC, a customer may be on</p> <p>16 multiple DC reports. In that case, the Data</p> <p>17 Analyst coordinates with the two DCMs to</p> <p>18 determine which will handle the customer</p> <p>19 review.</p> <p>20 On the other hand, situations</p> <p>21 where a customer is using more than one DC</p> <p>22 and the sales of "Lifestyle Drugs" at either</p> <p>23 DC is not greater than 8,000 doses but the</p> <p>24 total sales is greater than 8,000 doses would</p> <p>25 be missed by the current process.</p>	<p style="text-align: right;">Page 232</p> <p>1 though, that either of those circumstances --</p> <p>2 well, let's handle them one by one so strike</p> <p>3 that.</p> <p>4 A circumstance where a customer</p> <p>5 is being handled by multiple distribution</p> <p>6 centers under the Lifestyle Drug Monitoring</p> <p>7 Program, if the report is handled by</p> <p>8 distribution center, they could exceed the</p> <p>9 8,000 threshold without the company knowing</p> <p>10 it, right?</p> <p>11 MR. EPPICH: Objection,</p> <p>12 foundation. Calls for speculation.</p> <p>13 A. There could be other analytical</p> <p>14 tools that were being used in addition to</p> <p>15 this. So, again, I wasn't familiar -- I</p> <p>16 don't remember this occurring because</p> <p>17 customers were assigned to a geographic</p> <p>18 region, assigned to a distribution center.</p> <p>19 So I don't specifically</p> <p>20 remember this scenario.</p> <p>21 QUESTIONS BY MR. BOGLE:</p> <p>22 Q. Since you were the process</p> <p>23 owner, would you have had an ability to</p> <p>24 review this report before it was finalized?</p> <p>25 A. Are you referring to the</p>
<p style="text-align: right;">Page 231</p> <p>1 Additionally, customers with</p> <p>2 multiple accounts at a single DC with</p> <p>3 aggregate sales exceeding the thresholds are</p> <p>4 being missed by the current process.</p> <p>5 Do you see that?</p> <p>6 A. I see that.</p> <p>7 Q. Do you recall this deficiency</p> <p>8 being pointed out in this audit?</p> <p>9 A. I don't recall. Customers were</p> <p>10 assigned to a specific location usually based</p> <p>11 on geographic regions, so it would be unusual</p> <p>12 if this occurred. I don't specifically</p> <p>13 recall it.</p> <p>14 Q. Okay. Do you recall any</p> <p>15 investigation being done after this to</p> <p>16 determine if there were customers that were</p> <p>17 being handled by multiple distribution</p> <p>18 centers, to address this concern?</p> <p>19 A. Not that -- not that I recall.</p> <p>20 Q. What about customers with</p> <p>21 multiple accounts at one distribution center,</p> <p>22 as is outlined here? Do you recall that</p> <p>23 being investigated after this audit?</p> <p>24 A. I don't recall.</p> <p>25 Q. Okay. You would agree with me,</p>	<p style="text-align: right;">Page 233</p> <p>1 internal audit document?</p> <p>2 Q. This audit report, yeah.</p> <p>3 A. No. Because this is -- this is</p> <p>4 not an audit I conducted. This is an audit</p> <p>5 that was conducted by internal audit.</p> <p>6 Q. Okay. So the auditor here was</p> <p>7 Sandy Campbell. Do you know -- I don't know</p> <p>8 if it's a him or a her.</p> <p>9 A. I don't know Sandy.</p> <p>10 Q. Okay. Internal audit at</p> <p>11 McKesson during this time period, were their</p> <p>12 conclusions, from your perspective, generally</p> <p>13 accurate?</p> <p>14 A. I have no reason to think</p> <p>15 otherwise. Internal audit a lot of times was</p> <p>16 a third party that McKesson would hire. But</p> <p>17 I have no reason to believe there was an</p> <p>18 issue with them.</p> <p>19 Q. Okay. And the other situation</p> <p>20 described here where one customer has</p> <p>21 multiple accounts with a single distribution</p> <p>22 center, do you have any reason to disagree,</p> <p>23 if that were the case for any customer, that</p> <p>24 they could circumvent the process that was</p> <p>25 established under the LDMP?</p>

<p style="text-align: right;">Page 234</p> <p>1 MR. EPPICH: Objection;</p> <p>2 foundation, calls for speculation.</p> <p>3 A. Again, I don't recall the --</p> <p>4 this situation occurring. If it's stated, it</p> <p>5 may have occurred, but I don't know.</p> <p>6 QUESTIONS BY MR. BOGLE:</p> <p>7 Q. Okay. Well, is it your view</p> <p>8 that that's an unfounded concern being raised</p> <p>9 by the auditor there?</p> <p>10 MR. EPPICH: Objection;</p> <p>11 foundation, calls for speculation.</p> <p>12 A. I don't know.</p> <p>13 QUESTIONS BY MR. BOGLE:</p> <p>14 Q. The next paragraph said --</p> <p>15 says: The DCs are burdened by the amount of</p> <p>16 information on one report. Meaning, a</p> <p>17 customer that has already been reviewed and</p> <p>18 the sales quantity determined to be</p> <p>19 legitimate will continue to be included on</p> <p>20 the report as long as the volume is above the</p> <p>21 threshold. Also, it is not possible to tell</p> <p>22 from the report what stage of review the</p> <p>23 customer is in. If the DCs become</p> <p>24 overwhelmed by the LDMP, something will be</p> <p>25 missed.</p>	<p style="text-align: right;">Page 236</p> <p>1 Lifestyle Drug Program, McKesson U.S.</p> <p>2 Pharma - DEA Licensure Audit of Landover,</p> <p>3 Maryland DC.</p> <p>4 Do you see that?</p> <p>5 A. I see that.</p> <p>6 Q. Okay. The date on this one is</p> <p>7 August 17, 2007 is the last revised date.</p> <p>8 Do you see that there?</p> <p>9 A. I see that.</p> <p>10 Q. Okay. And I want to ask you</p> <p>11 about Section 1.1, which is on page 2.</p> <p>12 MR. LOMBARDO: Excuse me, does</p> <p>13 this exhibit have a Bates number?</p> <p>14 MR. BOGLE: MCKMDL00591841.</p> <p>15 QUESTIONS BY MR. BOGLE:</p> <p>16 Q. All right. Section 1.1 says</p> <p>17 right under that: The Distribution Center</p> <p>18 Manager for Landover and the local Sales Team</p> <p>19 has met and collaborated on how to handle the</p> <p>20 Lifestyle Drug Monitoring Program. There</p> <p>21 were two incidents in the past 2-3 years that</p> <p>22 proved it necessary to take more interest in</p> <p>23 reviewing narcotics/controlled substance</p> <p>24 purchases and buying activity for customers.</p> <p>25 During the interview with IA -- which is</p>
<p style="text-align: right;">Page 235</p> <p>1 Do you see that?</p> <p>2 A. I see that.</p> <p>3 Q. And certainly, you guys didn't</p> <p>4 want anything to be missed under the LDMP,</p> <p>5 right?</p> <p>6 MR. EPPICH: Objection, form.</p> <p>7 A. We wanted accurate data and</p> <p>8 reporting.</p> <p>9 QUESTIONS BY MR. BOGLE:</p> <p>10 Q. Were you involved in the</p> <p>11 auditing of individual distribution centers</p> <p>12 with their compliance with the LDMP?</p> <p>13 A. As I said earlier, I don't</p> <p>14 recall specifically what aspects of LDMP were</p> <p>15 integrated into the preexisting audit at that</p> <p>16 time. This was only in existence for about a</p> <p>17 year before it was migrated into a more</p> <p>18 robust program of CSMP.</p> <p>19 Q. All right. I'm going to hand</p> <p>20 you Exhibit 1.1913, also marked as</p> <p>21 Exhibit 16.</p> <p>22 (McKesson-Hilliard Exhibit 16</p> <p>23 was marked for identification.)</p> <p>24 QUESTIONS BY MR. BOGLE:</p> <p>25 Q. Do you see here this is a</p>	<p style="text-align: right;">Page 237</p> <p>1 internal audit, right?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay.</p> <p>4 -- the DCM noted that the</p> <p>5 current monitoring program at Landover does</p> <p>6 not include any MHS accounts.</p> <p>7 MHS is the hospital accounts?</p> <p>8 A. That's correct.</p> <p>9 Q. -- or Retail National Accounts.</p> <p>10 Those are the large chain</p> <p>11 pharmacies, right?</p> <p>12 A. Also correct.</p> <p>13 Q. Okay. The accounts being</p> <p>14 monitored are primarily the Retail</p> <p>15 Independent accounts.</p> <p>16 Those are the smaller</p> <p>17 independent pharmacies, right?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. So the goal of the</p> <p>20 Lifestyle Drug Monitoring Program was that</p> <p>21 all pharmacies were to be monitored, right?</p> <p>22 It wasn't just for independent pharmacies,</p> <p>23 was it?</p> <p>24 MR. EPPICH: Objection. Calls</p> <p>25 for speculation. Foundation.</p>

<p style="text-align: right;">Page 238</p> <p>1 A. I don't recall what was stated 2 in the SOP for that part. 3 QUESTIONS BY MR. BOGLE: 4 Q. Okay. Can you think of any 5 reason why you would have drafted an SOP to 6 just apply to the independent pharmacy 7 customers? 8 A. Well, what I do recall is the 9 independent pharmacies were a focus of the 10 DEA. That's what was presented to us. And 11 so that was a key focus. You know, this was 12 a new program and in development, so -- 13 again, I don't recall specifically what was 14 listed in the SOP, that it would say it 15 excludes it or not. 16 But I do recall the DEA telling 17 us the focus as being the independent 18 accounts. 19 Q. Well, you would agree that it's 20 not just about what the DEA tells you; it's 21 about, you know, doing everything you can as 22 a good company to make sure that suspicious 23 orders aren't being filled, right? 24 MR. EPPICH: Object to the 25 form.</p>	<p style="text-align: right;">Page 240</p> <p>1 the issue we were talking about with Landover 2 about whether MHS, which is the hospital 3 accounts, and the retail national accounts, 4 were supposed to be monitored under this 5 program. So if you take a look at the last 6 paragraph on the first page where it says, 7 "If the account." 8 Do you see that reference? 9 A. I see that. 10 Q. It says: If the account is a 11 large customer that McKesson expects to 12 purchase in large quantities, for example: 13 Institutional, warehouse accounts, government 14 or mail-order, then you'll generally only 15 have to perform a Level I review. However, 16 large spikes of any customer, including 17 hospitals, warehouse accounts, or government 18 accounts, must be evaluated. 19 Do you see that? 20 A. I see it. 21 Q. Okay. So does this indicate to 22 you that it wasn't just the small independent 23 chains that were supposed to be evaluated in 24 this program? 25 A. Yes. So the expectation is the</p>
<p style="text-align: right;">Page 239</p> <p>1 A. We were working on developing 2 better and better programs, and to enhance 3 the original DU45, this was the next learning 4 curve in a program that we were trying to get 5 out and it was a large initiative. I don't 6 recall if it was a phased approach or how 7 that worked, but I just recall the 8 independents were a key focus. 9 QUESTIONS BY MR. BOGLE: 10 Q. Okay. Well, let's take a look 11 at the SOP itself on this issue, then, so we 12 can sew that up. It's 1.1333, Exhibit 17 to 13 your deposition, which is MCKMDL00330211. 14 (McKesson-Hilliard Exhibit 17 15 was marked for identification.) 16 QUESTIONS BY MR. BOGLE: 17 Q. Okay. What I've handed you is 18 from the McKesson Operations Manual titled 19 Lifestyle Drug Monitoring Program. 20 Do you recognize this document? 21 A. Yes, I do. 22 Q. Okay. This is the SOP, right, 23 for LDMP? 24 A. Correct. 25 Q. Okay. I just want to address</p>	<p style="text-align: right;">Page 241</p> <p>1 larger accounts, government accounts, mail 2 orders, they are going to have the large 3 quantities. But, yes, it does list the 4 hospitals and warehouse accounts. 5 Q. Just looking at the LDMP 6 itself, it does not on its face limit itself 7 to independent pharmacies, does it? 8 A. Not that I recall. 9 Q. And not that you see here 10 either, right? 11 A. Right. 12 Q. Now, the due diligence required 13 under the LDMP was supposed to be conducted 14 by the distribution center as soon as the 15 customer hits the 8,000 number, right? Due 16 diligence was supposed to be instituted 17 immediately thereafter, right? 18 MR. EPPICH: Object to form. 19 A. I believe that's what was 20 stated. 21 QUESTIONS BY MR. BOGLE: 22 Q. Okay. And I'm going to hand 23 you next, then, what I'm marking as 24 Exhibit 18, which is 1.1918, and that's 25 MCKMDL00591858.</p>

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1 (McKesson-Hilliard Exhibit 18
2 was marked for identification.)
3 QUESTIONS BY MR. BOGLE:
4 Q. There you go, sir.
5 And this is another Lifestyle
6 Drug Program, McKesson U.S. Pharma - DEA
7 Licensure Audit, this time for the Southern
8 California distribution center.
9 Do you see that?
10 A. I see that.
11 Q. This one's last revised date is
12 August 23, 2007.
13 Do you see where that's
14 referenced?
15 A. I see that.
16 Q. Okay. I want to look at
17 Section 1.1 again. And again, that first
18 paragraph under 1.1 says: The Distribution
19 Center Manager for So Cal DC and the local
20 Sales Team has met and collaborated on how to
21 handle the Lifestyle Drug Monitoring Program.
22 During the interview with IA -- which again,
23 is internal audit, right?
24 A. Correct.
25 Q. -- the DCM noted that the

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1 current monitoring program at So Cal does not
2 include any MHS accounts or Retail National
3 Accounts. The accounts being monitored are
4 primarily the Retail Independent accounts.
5 Do you see where that's stated?
6 A. I see that.
7 Q. And if you can go to page .3.
8 I'm on Section 1.4, where it says: DC's
9 Observation of the LDMP.
10 Do you see that section?
11 A. I see that.
12 Q. The second sentence in the
13 second paragraph under that says: Marc
14 states that in his opinion, the monitoring
15 done by Jan Phillips is done "after the fact"
16 and should be initiated sooner from her
17 level.
18 Do you see that?
19 A. I see that.
20 Q. And Marc is the distribution
21 center manager for that distribution center,
22 right?
23 A. Correct.
24 Q. Okay. And "the monitoring" is
25 talking about the monitoring under the LDMP,

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1 right?
2 MR. EPPICH: Objection,
3 foundation. Calls for speculation.
4 A. That's what's stated here.
5 QUESTIONS BY MR. BOGLE:
6 Q. And again, the purpose of the
7 LDMP was not to do the review after the fact
8 but to do it as soon as possible once they
9 hit the 8,000 number, right?
10 MR. EPPICH: Objection,
11 foundation, form.
12 A. That's my recollection.
13 QUESTIONS BY MR. BOGLE:
14 Q. All right. I just want to show
15 you one more of these audits, which is
16 Exhibit 1.1917, marked as Exhibit 19 to your
17 deposition, and that's MCKMDL00591251.
18 (McKesson-Hilliard Exhibit 19
19 was marked for identification.)
20 QUESTIONS BY MR. BOGLE:
21 Q. And this is an Audit Report,
22 DEA Licensure Compliance and LDMP Audit, U.S.
23 Pharmaceuticals.
24 Do you see that at the top?
25 A. I see that.

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1 Q. And this is sent to both
2 yourself and Bruce Russell, right?
3 A. That is correct.
4 Q. Okay. And it says the date
5 audit completed here was August 31, 2007.
6 Do you see that reference?
7 A. Yes, I see that.
8 Q. The rating here is green. What
9 does that color represent in this auditing
10 scheme?
11 A. Satisfactory.
12 Q. Okay. Let's go to page .7 of
13 this document. Under number 1, under the
14 Issue/Observation column, you see where it
15 says Lifestyle Drugs Monitoring Program?
16 A. Yes, I do.
17 Q. Okay. The first bullet point
18 below that says: Account reps and/or the
19 Customer Care groups associated with Retail
20 National Accounts and Hospital accounts are
21 unaware of the directive to monitor Lifestyle
22 Drugs and are not performing this task.
23 Do you see that?
24 A. I see that.
25 Q. Okay. And there's actually a

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1 Risk column to the right of that for this
 2 specific issue, right?
 3 A. Yes, there is.
 4 Q. Okay. And under Significance
 5 for Risk related to this issue, it's noted to
 6 be moderate, right?
 7 A. Correct.
 8 Q. And the actual risk outlined
 9 is: Differences in the LDMP execution will
 10 lead to inefficiencies as it relates to
 11 compliance with the DEA expectations.
 12 Do you see that statement?
 13 A. I see that.
 14 Q. Do you agree with that
 15 statement, if there's differences in LDMP
 16 execution it's going to lead to
 17 inefficiencies with compliance?
 18 A. Yes. That could happen.
 19 Q. And then I want to look at one
 20 more thing here on the next page. The top
 21 bullet point here under Issues/Observations
 22 says: Provide structured training to DC
 23 personnel or other functions that provide
 24 input to the DEA process. Compliance
 25 regulations are not reinforced or

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1 periodically revisited for updates relative
 2 to DEA changes or mandates.
 3 Do you see that reference?
 4 A. I see the reference.
 5 Q. Okay. And then related to that
 6 bullet point, there's a risk of: Lack of
 7 process oversight could lead to
 8 noncompliance.
 9 Do you see that?
 10 A. I see that.
 11 Q. Okay. Do you agree that lack
 12 of process oversight with any measure in
 13 regulatory affairs could lead to
 14 noncompliance?
 15 MR. EPPICH: Objection to the
 16 extent it misstates the document.
 17 A. Process oversight should occur
 18 to ensure compliance with the LDMP program
 19 that was implemented.
 20 QUESTIONS BY MR. BOGLE:
 21 Q. Okay. Okay. We touched on
 22 this a little bit before, but I want to get
 23 more specific with you as far as the size and
 24 scope of the regulatory department at various
 25 points in time at McKesson.

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1 So prior to 2008, so let's talk
 2 1997 to 2008, the regulatory department at
 3 McKesson for pharmaceuticals generally
 4 consisted of three people, right?
 5 A. Correct.
 6 Q. All right. That's you, Don
 7 Walker, Bruce Russell. True?
 8 A. Generally speaking, yes.
 9 Q. Okay. And do you recall
 10 attending a DEA conference in 2007 that
 11 raised concerns for you that three people was
 12 insufficient resources to do what you needed
 13 to do as far as regulatory compliance at
 14 McKesson?
 15 MR. EPPICH: Object to the
 16 form.
 17 A. Yeah, I don't recall attending
 18 a conference that stated we didn't have
 19 enough people in our department.
 20 QUESTIONS BY MR. BOGLE:
 21 Q. All right. Let's take a look
 22 at Exhibit 1.2002, which is Exhibit 20 to
 23 your deposition.
 24 (McKesson-Hilliard Exhibit 20
 25 was marked for identification.)

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1 QUESTIONS BY MR. BOGLE:
 2 Q. All right. And here we've got
 3 a series of e-mails and we're going to walk
 4 through a couple of portions here with you.
 5 This is MCKMDL00622532.
 6 Let's start by looking at an
 7 e-mail from you in the middle of the page
 8 there on September 11, 2007, at 3:25 p.m.
 9 Do you see where I'm at?
 10 A. I see that.
 11 Q. Okay. It's an e-mail from you
 12 to Donald Walker, Ina Trugman -- what does
 13 Ina Trugman do at this time for the company?
 14 A. She was McKesson counsel. She
 15 worked for McKesson.
 16 Q. Legal counsel?
 17 A. Correct.
 18 Q. CC'ing Tom McDonald, Bruce
 19 Russell and Sheila Pacheco. I don't know if
 20 I got that right, but I tried.
 21 A. That's right.
 22 Q. The subject is: Mapes and ABC
 23 presentation notes.
 24 Do you see that subject?
 25 A. I see that.

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1 Q. Okay. And you say here in the
2 body of the e-mail: Don, I am attending the
3 DEA Pharmaceutical Conference today. Mike
4 Mapes (30 days until retirement) and Chris
5 Zimmerman, VP Corporate Security and
6 Regulatory Affairs, ABC, spoke on Drug
7 Diversion.

8 Do you see that sentence?

9 A. I see that.

10 Q. ABC, is that AmerisourceBergen?

11 A. That's correct.

12 Q. In my opinion, this could be
13 the "time bomb" you referenced. ABC's
14 program appears to be more robust in the
15 following areas. I expect Mapes to define
16 this as the standard.

17 Do you see that?

18 A. I see that.

19 Q. So you're talking about a time
20 bomb there. What are you talking about?

21 A. I don't recall. I'm referring
22 to something that Don must have said. I
23 don't recall what the context was.

24 Q. Okay. And then you list the
25 following areas in which you've concluded

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1 ABC's Suspicious Order Monitoring Program is
2 more robust than McKesson's at this point in
3 time, right?

4 A. That's what's stated, yes.

5 Q. Okay. The first is: Four
6 dedicated Regulatory Directors for their
7 diversion program.

8 Do you see that as number 1?

9 A. Yes, I do.

10 Q. Okay. And at this point in
11 time, in September 2007, it was just you as
12 far as being a director of regulatory
13 affairs, right?

14 A. For the field, yes.

15 Q. All right. Number 2 says:
16 Dedicated regulatory FTE at each DC.

17 What does "FTE" mean?

18 A. Full-time employee.

19 Q. Okay. Works on this program as
20 well as other regulatory functions.

21 So at this point in time, in
22 September 2007, did McKesson have any
23 full-time regulatory employees working at
24 each distribution center?

25 MR. EPPICH: Objection,

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1 foundation.

2 A. Not in the same context. There
3 were full-time employees that worked -- we
4 called them ARCOS clerks. There could be
5 other titles that they may have in the
6 warehouse where they perform DEA functions,
7 whether it's reviewing DU45s, ARCOS reports,
8 inventories, things of that nature.

9 QUESTIONS BY MR. BOGLE:

10 Q. Okay. But was there a
11 dedicated regulatory full-time staffer at
12 each distribution center in this time frame
13 doing that?

14 MR. EPPICH: Objection, asked
15 and answered.

16 A. They performed regulatory
17 functions. Their titles may not have stated
18 "regulatory."

19 QUESTIONS BY MR. BOGLE:

20 Q. Okay. Number 3 says:
21 Monitoring All -- and all is in caps --
22 controlled substances and list I drugs under
23 this program.

24 Do you see that?

25 A. I see that.

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1 Q. Number 4 says: Regulatory
2 control's approval for new accounts.

3 Do you see that reference?

4 A. I see that.

5 Q. Okay. And so at this point in
6 time in September 2007, ABC's program was
7 more robust than McKesson's in that regard
8 because regulatory did not approve new
9 accounts at that point, right?

10 A. Not to my recollection.

11 Q. Okay. 5 says: Orders are held
12 for on-site review and approval. Realtime
13 review prior to release of order. Escalated
14 as necessary to regional directors.

15 Do you see that?

16 A. I see that.

17 Q. Okay. And realtime review
18 being done prior to release of orders was not
19 being -- was not the standard practice at
20 McKesson at this point in time, was it?

21 A. It was not.

22 Q. Then you say: In conversation
23 with Cardinal, they have three dedicated
24 persons working their diversion control
25 program beyond the DC's participation.

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1 Do you see that?

2 A. Yes, I see that.

3 Q. Okay. So again, that's more

4 people than McKesson had working in that

5 regard at that point in time, right?

6 A. Yes.

7 Q. And then so Donald Walker

8 responds to your e-mail above that, and he

9 says: Gary, thank you, I think, for this

10 information. Based on this I would expect

11 DEA would see as not being serious. I will

12 begin putting some contingencies together.

13 Do you see that?

14 A. I see that.

15 Q. Okay. So there were concerns

16 at this point in time that based on this

17 presentation that DEA would have seen from

18 ABC that they would view McKesson as not

19 being serious in their suspicious order

20 monitoring practices, right?

21 MR. EPPICH: Objection;

22 foundation, calls for speculation.

23 A. That was a concern.

24 QUESTIONS BY MR. BOGLE:

25 Q. Then you respond up above

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1 that -- I'm looking at the second sentence

2 there in that response, where you say: Steve

3 Reardon mentioned that Mapes had contacted

4 him prior to the meeting wanted him to go

5 back to Washington to discuss some accounts.

6 Steve asked him who they were so he could

7 check into it. He got the accounts and

8 verified they had already discontinued

9 business with them. Mapes asked him why he

10 didn't inform Kyle Wright or himself. No

11 reason. Mapes requested that he do so in the

12 future. We have not been notifying Mapes or

13 Wright either. Based on the information I am

14 pulling together, we should notify them as

15 well on our closed accounts.

16 Do you see those references?

17 A. I see that.

18 Q. Okay. So at this point in time

19 in 2007, when McKesson would close an account

20 for any concerns with suspicious activity,

21 there was no notification being sent to the

22 DEA at that point. That's what you're

23 referencing, right?

24 MR. EPPICH: Objection to the

25 form.

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1 A. My recollection was that

2 accounts were closed for numerous reasons and

3 some of those reasons could have been in

4 relation to the LDMP level reviews and that

5 if we just decided to discontinue business

6 with them, based on those reviews or anything

7 else, they weren't getting reported to the

8 DEA, which DEA may perceive that we're not

9 actively working on the accounts.

10 QUESTIONS BY MR. BOGLE:

11 Q. Okay. And plus, if you report

12 a customer to the DEA as being someone that

13 you've -- you're no longer willing to do

14 business with, that would allow the DEA to be

15 aware of that and investigate that

16 themselves, right?

17 MR. EPPICH: Objection; calls

18 for speculation.

19 A. Just because we decide not to

20 do business with them didn't mean they were a

21 bad player. There may just not have been

22 enough green lights to check off to say that

23 we're willing to do business with them.

24 QUESTIONS BY MR. BOGLE:

25 Q. But what would be the harm in

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1 letting the DEA know that, to let them make

2 their own decision?

3 MR. EPPICH: Objection; calls

4 for speculation.

5 A. Yeah, it's -- that's why I

6 pointed out here that it's probably best

7 that, since Mapes had responded to Cardinal,

8 that -- to inform them, that it would be in

9 our best interest also to inform them, and

10 that way they'd know that we were actively

11 working on these.

12 QUESTIONS BY MR. BOGLE:

13 Q. But why would you need to hear

14 that from Mr. Mapes? I mean, wouldn't it be

15 common sense that if you cut a customer off

16 altogether and aren't willing to sell them

17 controlled substances because you have some

18 concern about them, that that would be

19 important to notify the DEA about? Why would

20 you need the DEA to tell you that?

21 MR. EPPICH: Objection to form;

22 calls for speculation, assumes facts

23 not in evidence.

24 A. Just because we decided to do

25 business with them again for various reasons,

<p style="text-align: right;">Page 258</p> <p>1 it was not initially apparent that we needed 2 to notify them. 3 QUESTIONS BY MR. BOGLE: 4 Q. Okay. So that's not something 5 that dawned on you guys until this reference 6 was made. True? 7 MR. EPPICH: Objection; calls 8 for speculation. Misstates prior 9 testimony. 10 A. This is when I pointed it out. 11 I don't know if there's any other discussion 12 that took place on it. 13 QUESTIONS BY MR. BOGLE: 14 Q. Okay. To your knowledge, this 15 was not something that -- well, strike that. 16 This was not something that 17 dawned on you as being something that needed 18 to be reported until you heard this 19 discussion in September 2007, right? 20 MR. EPPICH: Objection to the 21 form; misstates prior testimony, 22 misstates the document. 23 A. You know, it came to my 24 conclusion based on these conversations. I 25 brought it up to my senior manager and -- so</p>	<p style="text-align: right;">Page 260</p> <p>1 included in that group, right? 2 A. That's correct. 3 Q. Okay. And this is from 4 October 16, 2009, with a subject "DEA Meeting 5 in Portland (Recap)." 6 Do you see that? 7 A. I see that. 8 Q. So Mr. McDonald says 9 thereafter: Gary and I attended the DEA 10 Pharmaceutical Industry Conference in 11 Portland this week. Although the meeting was 12 generally a rehash of the last industry 13 conference we attended in Houston a couple of 14 years ago, it does appear that the DEA is 15 trying to promote an image of collaboration. 16 Do you see that? 17 A. I see that. 18 Q. And the Gary he's referencing 19 here that went to this conference with him 20 would be you, right? 21 A. Correct. 22 Q. I want to look at the second 23 page here of this document. This is a 24 continuation of that same e-mail. The first 25 full paragraph there that starts with "Chris</p>
<p style="text-align: right;">Page 259</p> <p>1 it could be addressed. 2 QUESTIONS BY MR. BOGLE: 3 Q. Do you recall going back to 4 another DEA conference a couple of years 5 later where you left with similar concerns 6 that McKesson was understaffed when it came 7 to suspicious order monitoring? 8 MR. EPPICH: Objection, form. 9 Vague. 10 A. I may have, but I don't 11 specifically remember. 12 QUESTIONS BY MR. BOGLE: 13 Q. Okay. Let's take a look at 14 what I'm marking as Exhibit 21, which is 15 1.1856, and that's MCKMDL00573535. 16 (McKesson-Hilliard Exhibit 21 17 was marked for identification.) 18 QUESTIONS BY MR. BOGLE: 19 Q. All right. I want to take a 20 look at the e-mail, middle of the first page, 21 from Tom McDonald to what I believe is a 22 regulatory e-mail group. Is that right? Is 23 that the regulatory e-mail group? 24 A. That's correct. 25 Q. Okay. So you would have been</p>	<p style="text-align: right;">Page 261</p> <p>1 Zimmerman." 2 Do you see that? 3 A. I see that. 4 Q. It says: Chris Zimmerman 5 shared ABC's approach to controlled substance 6 monitoring briefly. It appears that they 7 employ more people in support of this process 8 than we do. Chris has a centralized staff of 9 people that investigates all new customers. 10 He has a full-time analyst crunching data 11 daily to look for trends. They not only look 12 at controls, but corresponding drug trends. 13 He used stool softeners as an example with 14 certain pain meds that generate constipation. 15 It sounds like he has a full-time person at 16 each facility reviewing all controlled 17 substance orders daily prior to shipping. 18 Do you see that reference? 19 A. I see that. 20 Q. Okay. And again, these were 21 concerns from a meeting you attended with 22 Mr. McDonald that he's raising that, at least 23 in his view, ABC is putting more resources to 24 suspicious order monitoring than McKesson was 25 at the time, right?</p>

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1 MR. EPPICH: Objection;
 2 foundation, calls for speculation.
 3 A. These are Tom's comments.
 4 QUESTIONS BY MR. BOGLE:
 5 Q. Okay. But those -- his
 6 comments are along those lines, right?
 7 MR. EPPICH: Objection;
 8 foundation, calls for speculation.
 9 A. I don't know everything that
 10 Tom was thinking here. This is what he
 11 states is the employees that
 12 AmerisourceBergen has, so...
 13 QUESTIONS BY MR. BOGLE:
 14 Q. And, you see, you actually do
 15 respond to his e-mail thereafter, right?
 16 A. Okay. Yes.
 17 Q. Do you see that there?
 18 A. Yes.
 19 Q. Okay. And your response
 20 doesn't include any statement from you that
 21 you disagree with anything he said in the
 22 e-mail below, right, or correcting anything
 23 that you saw at the meeting?
 24 A. I made no comments to Tom's
 25 e-mail below.

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1 Q. Right. You make no corrections
 2 based on what you perceived at that meeting,
 3 did you?
 4 A. I did not comment on his
 5 meeting notes.
 6 Q. Okay. But you're aware that
 7 significant additions to McKesson's
 8 regulatory team did not occur, in fact, until
 9 the 2013-2014 time frame, right?
 10 MR. EPPICH: Object to the
 11 form.
 12 A. There were -- we doubled in
 13 size when the regional DRAs came aboard, so
 14 that was a major change from that aspect.
 15 There were certainly much larger numbers that
 16 came onboard as the department developed.
 17 QUESTIONS BY MR. BOGLE:
 18 Q. Right. But we just looked at
 19 this discussion from 2009. So it wasn't --
 20 after 2009, it wasn't until late 2013, early
 21 2014, that significant additions were made as
 22 far as staffing in the regulatory department
 23 of McKesson, right?
 24 MR. EPPICH: Objection to form;
 25 asked and answered.

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1 A. I'm not sure exactly on the
 2 dates. We doubled in size in the 2009 time
 3 frame, and at this point and juncture of 2013
 4 and such, I'm no longer working actively in
 5 the CSMP program. But there were
 6 additional -- significant additional head
 7 count that was produced to the department. I
 8 just don't know exact dates when that
 9 occurred.
 10 QUESTIONS BY MR. BOGLE:
 11 Q. When you say you doubled in
 12 size in around 2009, that's doubling from
 13 three people to six people, right?
 14 A. Four more were added, so it's
 15 from three to seven.
 16 Q. Three to seven people, okay.
 17 A. Yeah.
 18 Q. And that's to cover, again,
 19 what is approximately 30 distribution
 20 centers, right?
 21 A. Correct.
 22 Q. Okay. And you're aware of --
 23 well, strike that.
 24 Not only 30 distribution
 25 centers, but supplying a large portion of the

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1 pharmaceutical products that people utilize
 2 in this country, right?
 3 MR. EPPICH: Object to the
 4 form. Calls for speculation.
 5 A. I didn't have any control on
 6 the head count in the department. That would
 7 be our -- Don Walker's position to decide
 8 what type of head counts we needed to cover
 9 the area. Again, I wasn't assigned to a
 10 region for those processes.
 11 QUESTIONS BY MR. BOGLE:
 12 Q. Okay. So additional staffing
 13 wouldn't have been your call. Is that what
 14 you're saying?
 15 A. That's correct.
 16 Q. We touched on this a little
 17 bit, but I want to talk more specifically
 18 about it. In 2008, following the settlement
 19 we saw with the DEA, the CSMP was
 20 implemented, right?
 21 A. Correct.
 22 Q. Okay. And under the CSMP,
 23 there were thresholds established for
 24 controlled substances for customers, right?
 25 A. There were thresholds, yes.

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1 Q. Okay. And those controlled
2 substances included opioid products, right?
3 A. Yes, they did.
4 Q. Okay. And when those
5 thresholds were initially set in 2008, they
6 were done by looking at the prior 12 months'
7 usage, taking the highest month of use in the
8 last 12 months, and adding a 10% buffer,
9 right?

10 MR. EPPICH: Objection, form.
11 Foundation, calls for speculation.

12 A. I didn't -- I recalled being in
13 the discussions, but I didn't actually do the
14 thresholds.

15 QUESTIONS BY MR. BOGLE:

16 Q. Okay. Do you not have any
17 knowledge that that's how they were set?

18 A. That seems to seem familiar,
19 but I don't recall specifically.

20 Q. Okay. Thresholds themselves
21 could be increased, though, by a process
22 called a Threshold Change Request, right?

23 A. That's correct.

24 MR. EPPICH: Object to the
25 form.

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1 form. Calls for speculation.

2 A. The goal is to ensure the
3 proper delivery of controlled substances to
4 customers. That doesn't mean it has to be
5 painful for them.

6 QUESTIONS BY MR. BOGLE:

7 Q. Okay. But we looked at the
8 2008 settlement agreement where there were --
9 there was a \$13.25 million fine paid for
10 conduct related to various distribution
11 centers for distribution of opioids.

12 In your view, after that, was
13 there not some reason to change the course of
14 conduct at McKesson as it pertained to
15 controlled substance distribution?

16 MR. EPPICH: Objection to the
17 form; calls for speculation.
18 Foundation.

19 A. McKesson, we worked to develop
20 new and enhanced programs that demonstrates
21 activity that occurred after that agreement.

22 QUESTIONS BY MR. BOGLE:

23 Q. Okay. But with the conduct
24 that we looked at in that settlement
25 agreement, do you agree or not agree that

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1 QUESTIONS BY MR. BOGLE:

2 Q. After the CSMP was established
3 in 2008, there was a general view expressed
4 at McKesson that the intent was, even though
5 the CSMP was being established, McKesson
6 intended it be for business as usual for its
7 pharmacy customers, right, as far as it
8 pertained to them getting controlled
9 substances?

10 MR. EPPICH: Object to the
11 form; calls for speculation.

12 A. In any implementation case, you
13 always want to not disrupt operations or
14 disrupt customers. So implementation of a
15 new program, whether it's a system upgrade
16 or, in this case, a new program, the purpose
17 would be to make it as least painful for your
18 customers as possible.

19 QUESTIONS BY MR. BOGLE:

20 Q. But the primary purpose in
21 establishing the CSMP would need to be making
22 sure that there's proper monitoring and
23 reporting of controlled substance purchases,
24 right? That's the ultimate goal, right?

25 MR. EPPICH: Object to the

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1 changes needed to be made in the controlled
2 substance monitoring practices at McKesson?

3 MR. EPPICH: Object to form.

4 A. There were changes made.
5 That's how we came to develop the LDMP and
6 then developed the more robust CSMP program.

7 QUESTIONS BY MR. BOGLE:

8 Q. And if those changes are going
9 to be meaningful, then it shouldn't be
10 business as usual for customers, should it?
11 It should be more difficult for customers to
12 get controlled substances, right?

13 MR. EPPICH: Object to the
14 form. Vague.

15 A. You can work collaboratively
16 with your customers and not make it painful
17 for them, so, you know, it's -- business
18 doesn't have to be painful. Changing
19 processes, enhancing programs, working
20 collaborative with customers, is what was
21 needed and what we developed and it could
22 enhance the program.

23 QUESTIONS BY MR. BOGLE:

24 Q. Okay. So then when the CSMP
25 was developed, was it your understanding that

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1 the ultimate goal was to make sure that
2 customers stayed happy and kept getting the
3 product that they wanted to get?

4 MR. EPPICH: Object to the
5 form; vague, misstates prior
6 testimony.

7 A. Obviously that wasn't the
8 purpose.

9 QUESTIONS BY MR. BOGLE:

10 Q. Okay. So is it an accurate
11 statement that the goal was to make sure that
12 there was no disruption in the business
13 activities of any McKesson customer?

14 MR. EPPICH: Objection to the
15 form; misstates prior testimony.
16 Calls for speculation.

17 A. As stated before, there were
18 customers that we discontinued doing business
19 with. So in some cases, customers would be
20 unhappy. But that doesn't mean that all
21 customers are going to get discontinued
22 business. They're all going to get reviewed,
23 and again, it doesn't mean it has to disrupt
24 the business between the companies.

25 --oOo--

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1 QUESTIONS BY MR. BOGLE:

2 Q. But if it becomes more
3 difficult for customers to get opioid
4 products, isn't that justified if you're
5 facing an epidemic?

6 MR. EPPICH: Objection to the
7 form. Vague. Calls for speculation.

8 A. I don't know what that would
9 affect to the customer. Just because you're
10 doing a review and you're knowing your
11 customer, you're making sure they obtain the
12 amount of product that they need for
13 legitimate purposes. That's not painful for
14 a customer.

15 QUESTIONS BY MR. BOGLE:

16 Q. Okay. So it's your testimony,
17 then, that -- I'm trying to make sure I
18 understand what you're saying here. So the
19 business-as-usual attitude did exist in
20 creation of the CSMP, right?

21 MR. EPPICH: Objection.

22 QUESTIONS BY MR. BOGLE:

23 Q. Am I understanding you
24 correctly?

25 MR. EPPICH: Objection, form.

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1 Misstates prior testimony.

2 A. No. We put together processes
3 and our functions changed. We had different
4 procedures that we had to comply with and
5 that also meant working with customers.

6 QUESTIONS BY MR. BOGLE:

7 Q. Okay. I'm handing you what I'm
8 marking as Exhibit 22 to your deposition,
9 which is Exhibit 1.1962, and that's
10 MCKMDL00543610.

11 (McKesson-Hilliard Exhibit 22
12 was marked for identification.)

13 QUESTIONS BY MR. BOGLE:

14 Q. We see here this is a series of
15 e-mails with an attached flier titled
16 McKesson Controlled Substances Monitoring
17 Program, Program Guide for Pharmacies.

18 Do you see that on the third
19 page?

20 A. I see that.

21 Q. Okay. And the e-mail that
22 attaches this, if you go back to the first
23 page, is from April 17, 2008.

24 Do you see that?

25 A. I see that.

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1 Q. This is right around the time
2 the CSMP was being launched, right?

3 A. That sounds correct.

4 Q. Okay. Looking at the flier on
5 the third page here, you see where it says
6 "Program details"?

7 A. I'm sorry, where, on the third
8 page?

9 Q. Yes, sir. "Program details,"
10 kind of --

11 A. I see that now.

12 Q. All right. It says: All U.S.
13 drug wholesalers have always been required by
14 DEA to monitor the ordering of controlled
15 substances. Those regulations have not
16 changed, but the extent to which wholesalers
17 are now required to monitor and enforce the
18 legitimate use of controlled substances has.
19 While we trust and respect our customers'
20 integrity and professionalism, we must
21 cooperate with these mandates from the DEA.

22 Do you see that?

23 A. I see that.

24 Q. Okay. And then below that it
25 says: Therefore, beginning this month,

<p style="text-align: right;">Page 274</p> <p>1 McKesson will implement the CSMP. Here's how</p> <p>2 the program works.</p> <p>3 And there's multiple bullet</p> <p>4 points below that, right?</p> <p>5 A. I see that.</p> <p>6 Q. Okay. And the next-to-last one</p> <p>7 says: Customers will be alerted in advance</p> <p>8 of meeting or exceeding their thresholds.</p> <p>9 Do you see that reference?</p> <p>10 A. Yes, I see that.</p> <p>11 Q. Okay. And that was a process</p> <p>12 known as a Threshold Warning Report, right?</p> <p>13 MR. EPPICH: Object to the</p> <p>14 form.</p> <p>15 A. That's my recollection.</p> <p>16 QUESTIONS BY MR. BOGLE:</p> <p>17 Q. Okay. And basically, the</p> <p>18 concept being that once the customer met a</p> <p>19 certain percentage of their threshold, they</p> <p>20 would be notified that they were approaching</p> <p>21 their threshold for a controlled substance,</p> <p>22 right?</p> <p>23 MR. EPPICH: Object to the</p> <p>24 form.</p> <p>25 A. That's also my recollection.</p>	<p style="text-align: right;">Page 276</p> <p>1 ensure controlled substances are used in the</p> <p>2 way they were intended, but it also ensures</p> <p>3 that you as a McKesson customer can continue</p> <p>4 with business as usual.</p> <p>5 Do you see that?</p> <p>6 A. Yes, I do.</p> <p>7 Q. Okay. Now, I want to talk to</p> <p>8 you a little bit more about the Threshold</p> <p>9 Warning Report concept. The purpose of the</p> <p>10 Threshold Warning Reports was to make sure</p> <p>11 that the customer was aware when they were</p> <p>12 approaching a threshold so they could ask for</p> <p>13 an increase before their supply got cut off,</p> <p>14 right?</p> <p>15 MR. EPPICH: Object to the</p> <p>16 form; calls for speculation.</p> <p>17 A. That's my recollection.</p> <p>18 QUESTIONS BY MR. BOGLE:</p> <p>19 Q. Okay. And also to make sure</p> <p>20 that, quite frankly, McKesson didn't lose</p> <p>21 those sales, right?</p> <p>22 MR. EPPICH: Object to the</p> <p>23 form. Argumentative.</p> <p>24 A. No. It would be so that due</p> <p>25 diligence could be conducted to determine if</p>
<p style="text-align: right;">Page 275</p> <p>1 QUESTIONS BY MR. BOGLE:</p> <p>2 Q. Okay. And the last bullet</p> <p>3 point on that page says: Customers can apply</p> <p>4 for threshold adjustments if their business</p> <p>5 is changing or they anticipate needing to</p> <p>6 place a larger order.</p> <p>7 Do you see that there?</p> <p>8 A. Yes, I see that.</p> <p>9 Q. Okay. Then if you go to the</p> <p>10 next page, there's a section that says</p> <p>11 "Communicating anticipated order increases."</p> <p>12 Do you see that?</p> <p>13 A. I see that.</p> <p>14 Q. The second sentence there says:</p> <p>15 McKesson has developed a Threshold Change</p> <p>16 Request process, allowing you to communicate</p> <p>17 your needs in advance so we can accommodate</p> <p>18 them in advance of any delays or disruptions</p> <p>19 in delivery.</p> <p>20 Do you see that?</p> <p>21 A. Yes, I see that.</p> <p>22 Q. Okay. And then the last thing</p> <p>23 I want to talk about is the gray box below</p> <p>24 that. The second sentence there says: This</p> <p>25 program addresses the DEA's requirements to</p>	<p style="text-align: right;">Page 277</p> <p>1 they needed additional threshold increase.</p> <p>2 QUESTIONS BY MR. BOGLE:</p> <p>3 Q. Okay. So in your view, then,</p> <p>4 it wasn't to ensure that McKesson didn't lose</p> <p>5 sales of controlled substances. Is that your</p> <p>6 testimony?</p> <p>7 MR. EPPICH: Object to the</p> <p>8 form; asked and answered.</p> <p>9 A. It was to conduct additional</p> <p>10 due diligence to see if they could get a</p> <p>11 threshold increase.</p> <p>12 QUESTIONS BY MR. BOGLE:</p> <p>13 Q. And not any concern at all</p> <p>14 about potentially losing sales?</p> <p>15 MR. EPPICH: Objection to form;</p> <p>16 asked and answered twice.</p> <p>17 A. It was to do due diligence to</p> <p>18 see if they needed a threshold change.</p> <p>19 QUESTIONS BY MR. BOGLE:</p> <p>20 Q. Okay. Do you recall being</p> <p>21 involved in any discussions about the need to</p> <p>22 set up a Threshold Warning Report for the</p> <p>23 very specific purpose of making sure McKesson</p> <p>24 didn't lose sales of controlled substances?</p> <p>25 MR. EPPICH: Objection to the</p>

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1 form; misstates prior testimony.
2 A. No.
3 MR. EPPICH: Assumes facts not
4 in evidence.
5 A. No, I do not recall ever having
6 any conversations of that nature.
7 QUESTIONS BY MR. BOGLE:
8 Q. Okay. I'm going to hand you
9 what I'm marking as Exhibit 23, which is
10 1.1804, and that's MCKMDL00543971.
11 (McKesson-Hilliard Exhibit 23
12 was marked for identification.)
13 QUESTIONS BY MR. BOGLE:
14 Q. There you go, sir.
15 All right. Let's start at the
16 last page of the document, .3. There's an
17 e-mail at the bottom from you, October 23,
18 2006, to a Sharon Mackarness.
19 Do you see that?
20 A. I see that.
21 Q. Okay. There you say: McKesson
22 will establish a monthly threshold of 10,000
23 dosage forms of hydrocodone for all customers
24 at each of its facilities. Customers
25 requesting to purchase more than this amount

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1 will be required to provide additional
2 information on its dispensing practices to
3 justify amounts above this threshold. Such
4 information will be reviewed by McKesson
5 Regulatory Affairs before a customer will be
6 authorized to purchase more than 10,000
7 dosage forms per month. McKesson will also
8 establish thresholds for other controlled
9 substances purchases.
10 Do you see that e-mail?
11 A. I see that.
12 Q. Okay. So then if you go to
13 page .2, I'm looking at the e-mail from
14 Sharon Mackarness back to you, October 26,
15 2006, at 3:44 p.m.
16 Do you see that?
17 A. Yes, I see that.
18 Q. Okay. The second paragraph she
19 says to you: JB -- JD brought up a valid
20 point in the meeting. We are in the business
21 to sell product. If we could produce a
22 report (you may already have one) that warned
23 a customer's approach to the threshold, say
24 at 85% of their 10,000 dosages, work could
25 begin on justifying an increase in threshold

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1 prior to any lost sales.
2 Do you see that?
3 A. I see that.
4 Q. Okay. And do you see your
5 response above in the second sentence in your
6 next e-mail, and what is that?
7 A. "I think JD's idea is good."
8 Q. Okay. And that's the idea
9 you're referencing, the one I just read
10 about, right?
11 A. The one stated in Sharon's
12 e-mail, yes.
13 Q. Right, okay. Which talks about
14 being in the business to sell product and
15 coming up with a threshold warning style
16 report that would allow customers to justify
17 an increase prior to McKesson losing sales,
18 right?
19 A. That's what's stated, yes.
20 Q. Okay.
21 MR. EPPICH: Are you at a good
22 place to take another break?
23 MR. BOGLE: Yeah, I was
24 actually about to say the same thing.
25 You read my mind.

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1 MR. EPPICH: Let's go ahead and
2 go off the record.
3 THE VIDEOGRAPHER: Off the
4 record at 2:34.
5 (Recess taken, 2:34 p.m. to
6 2:50 p.m.)
7 THE VIDEOGRAPHER: Stand by.
8 The time is 2:50. Back on the record,
9 beginning of File 5.
10 QUESTIONS BY MR. BOGLE:
11 Q. All right, Mr. Hilliard. You
12 recall earlier in the deposition we talked
13 about the PowerPoint that was presented by
14 Mr. Mapes at the September 1, 2005 meeting
15 with McKesson? Do you recall discussing that
16 generally?
17 A. Yes, I do.
18 Q. Okay. If we can pull that back
19 out, which I believe is Exhibit 4, and I want
20 to go back to page .9. We talked about this
21 a little bit before, but that bottom slide
22 there titled Suspicious Orders, the last
23 bullet point says: Report suspicious orders
24 to DEA when discovered.
25 Do you see that?

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1 A. I see that.
2 Q. Okay. And then on the next
3 page we talked about the last slide there,
4 the bottom slide there on that page, the
5 second bullet point, which says: Distributor
6 must determine which orders are suspicious
7 and make a sales decision.
8 Do you see that?
9 A. Yes, I see that.
10 Q. Okay. So between these two
11 bullet points, and quite frankly, the rest of
12 the discussion here, what's being conveyed,
13 among other things, is that McKesson is
14 expected to report suspicious orders, not
15 suspicious sales after the fact, right?
16 MR. EPPICH: Object to the
17 form; calls for speculation.
18 A. The slide states "suspicious
19 orders."
20 QUESTIONS BY MR. BOGLE:
21 Q. Right. And the second
22 reference we just read talks about
23 determining which orders are suspicious and
24 making a sales decision, right?
25 A. That's what's stated.

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1 Q. Okay. Again, that indicates
2 that the DEA is expecting you guys to make a
3 decision whether something is suspicious
4 before you make the sale, right?
5 MR. EPPICH: Object to the
6 form; calls for speculation.
7 A. I don't know specifically what
8 the intention or their thought from this
9 slide was.
10 QUESTIONS BY MR. BOGLE:
11 Q. Okay. Well, did you walk away
12 from this meeting thinking that the DEA's
13 expectations were for McKesson to report
14 suspicious sales after the fact rather than
15 orders when they were placed?
16 MR. EPPICH: Object to the
17 form; calls for speculation, asked and
18 answered.
19 A. I don't recall what I thought
20 after this meeting.
21 QUESTIONS BY MR. BOGLE:
22 Q. Okay. Regardless, on .9,
23 though, we can agree that there's no
24 reference to reporting suspicious sales;
25 rather, the reference is to reporting

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1 suspicious orders, right?
2 MR. EPPICH: Object to the
3 form. The document speaks for itself.
4 A. The document says "suspicious
5 orders."
6 QUESTIONS BY MR. BOGLE:
7 Q. Okay. And that was the
8 presentation from September 1, 2005, right?
9 A. That's correct.
10 Q. Okay. Then if we go back to
11 Exhibit 3, which is the Rannazzisi letter
12 from September 27, 2006, you recall
13 discussing this letter with me earlier today,
14 right?
15 A. Yes, I do.
16 Q. Okay. If we go to the second
17 page of the letter, there is a paragraph
18 about three-quarters of the way down that
19 says, "Thus, in addition to."
20 Do you see that?
21 A. Yes, I do.
22 Q. It says: Thus, in addition to
23 reporting all suspicious orders, a
24 distributor has a statutory responsibility to
25 exercise due diligence to avoid filling

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1 suspicious orders that might be diverted into
2 other than legitimate medical, scientific,
3 and industrial channels.
4 Do you see that?
5 A. I see that.
6 Q. Okay. And the next paragraph
7 down that we read before talks about the
8 distributor needing to exercise due care in
9 confirming the legitimacy of orders prior to
10 filling.
11 Do you see that reference in
12 the last sentence?
13 A. Yes, I see that now.
14 Q. Okay. So, again, this letter
15 from September 27, 2006, you would agree with
16 me makes clear that the expectation is that
17 McKesson will be reporting suspicious orders
18 and not filling them if it deems them
19 suspicious, right?
20 MR. EPPICH: Object to the
21 form. The document speaks for itself.
22 A. That's what's stated on here.
23 QUESTIONS BY MR. BOGLE:
24 Q. Okay. And so the idea, then,
25 is not to report suspicious sales, because

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1 you're not supposed to make the sale if the
 2 order is suspicious, right?
 3 MR. EPPICH: Object to the
 4 form. Calls for speculation.
 5 A. It states "suspicious orders."
 6 QUESTIONS BY MR. BOGLE:
 7 Q. And not "suspicious sales,"
 8 right?
 9 MR. EPPICH: Object to the
 10 form; calls for speculation.
 11 A. I don't recall seeing "sales"
 12 listed here.
 13 QUESTIONS BY MR. BOGLE:
 14 Q. Okay. And if you can pull back
 15 out Exhibit 20. And this was a document we
 16 discussed from the 2007 DEA conference.
 17 Do you recall that?
 18 A. Yes, I do.
 19 Q. Okay. And specifically, the
 20 e-mail that you -- I want to go back to the
 21 e-mail you wrote September 11, 2007, which is
 22 the middle of the first page.
 23 You with me?
 24 A. Yes, I am.
 25 Q. Okay. We didn't read the

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1 bottom portion of this e-mail on this page
 2 where you actually also summarize another
 3 presentation by Mr. Mapes.
 4 Do you see where that summary
 5 begins?
 6 A. Yes, I do.
 7 Q. Okay. First bullet point there
 8 says: The requirement is to report
 9 suspicious orders, not suspicious sales after
 10 the fact.
 11 Right?
 12 A. That's what's stated, yes.
 13 Q. Okay. That's what you wrote,
 14 right?
 15 A. Correct, based on his
 16 presentation.
 17 Q. Summarizing his presentation,
 18 right?
 19 A. Yes.
 20 Q. Okay. And then going five
 21 bullet points down from there where it says
 22 "Registrants"?
 23 A. I see that.
 24 Q. Registrants that routinely
 25 report suspicious orders yet fill these

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1 orders with reason to believe they are
 2 destined for the illicit market, and failing
 3 to maintain effective controls -- and failing
 4 to maintain effective controls against
 5 diversion.
 6 Do you see that?
 7 A. I see that.
 8 Q. And again, that's your summary
 9 of what Mr. Mapes presented that day, right?
 10 A. That's correct.
 11 Q. And the last bullet point below
 12 that says: Registrant should make informed
 13 decisions -- and then it's all caps -- BEFORE
 14 making the sale.
 15 Do you see that?
 16 A. I see that.
 17 Q. And again, that's your summary
 18 of his presentation that day, right?
 19 A. That's correct.
 20 Q. All right. I'm going to hand
 21 you now what I'm marking as Exhibit 24, which
 22 is 1.1937, and that's MCKMDL00623568.
 23 (McKesson-Hilliard Exhibit 24
 24 was marked for identification.)
 25 --oOo--

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1 QUESTIONS BY MR. BOGLE:
 2 Q. I put the sticker at the top so
 3 we don't cover up the writing. Okay. This
 4 is a series of e-mails, and again we're going
 5 to kind of work our way earliest in time to
 6 newest -- closest in time.
 7 So the bottom e-mail on the
 8 first page is one from Jenny Melton,
 9 August 26, 2008, again, sent to that
 10 regulatory e-mail group, right?
 11 A. Yes, it is.
 12 Q. That I think we agreed earlier
 13 you're a part of. True?
 14 A. That's correct.
 15 Q. Okay. What was Jenny Melton's
 16 role with the company at this point?
 17 A. Project manager.
 18 Q. Okay. She worked in regulatory
 19 affairs?
 20 A. She routinely worked with
 21 regulatory affairs on projects.
 22 Q. Okay. The subject of her
 23 e-mail there on August 26, 2008, is: CSMP
 24 Suspicious Transaction Reporting to the DEA.
 25 Do you see that?

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1 A. I see that.
 2 Q. And she lists there, carrying
 3 over to the next page, six different subjects
 4 under that heading.
 5 Do you see that?
 6 A. I see that.
 7 Q. Going to number 5 which is on
 8 the second page here, she says: The
 9 suspicious designation will not be
 10 systematically determined. Don or the DRAs
 11 will determine whether a transaction is
 12 deemed to be suspicious and the DRA will log
 13 into BI and flag the transaction as a
 14 suspicious transaction.
 15 Do you see that?
 16 A. I see that.
 17 Q. Okay. You respond to her
 18 e-mail on the same day, August 27, 2008. Do
 19 you see where you respond right above that?
 20 A. I see that.
 21 Q. Okay. You say: Question. I
 22 thought the requirement was raw data sales.
 23 As you have outlined, wouldn't this be
 24 customer "orders" and not McKesson sales? If
 25 a transaction/order is suspicious, we are not

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1 to fulfill the order, thus nothing to
 2 transmit.
 3 Do you see that?
 4 A. I see that.
 5 Q. Okay. Then Tracy Jonas
 6 responds above and says: I agree, Gary. I
 7 was under the impression that this was merely
 8 a "data dump" in a format that the DEA could
 9 utilize.
 10 Do you see that there?
 11 A. I see that.
 12 Q. Okay. Then Sheila Pacheco
 13 responds and says, on the same day: The DEA
 14 is asking for two different things on one
 15 file. You're correct about the "data dump"
 16 as you call it. Subsequently though, they
 17 are also asking for us to flag suspicious
 18 orders. Those will be determined by you and
 19 there should be very few. You will need to
 20 work together to identify what you might
 21 define as suspicious.
 22 Do you see that?
 23 A. I see that.
 24 Q. Okay. And then you respond
 25 again in the top e-mail, same day, and you

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1 say: That certainly complicates the
 2 transaction reporting. This would mean, 1,
 3 regulatory reviews every controlled substance
 4 order daily (filled or not); or, 2, the
 5 system is programmed to notify regulatory for
 6 orders meeting a "suspicious" criteria.
 7 (define suspicious; some form of DU45); or,
 8 3 -- and you list three question marks there,
 9 right?
 10 A. Yes.
 11 Q. And you say: I agree there
 12 will be very few, but I expect the DEA will
 13 want to know how (SOP) we are evaluating the
 14 data.
 15 Do you see that?
 16 A. I see that.
 17 Q. So in this e-mail chain, you --
 18 initially, in your August 27, 2008 first
 19 response there, were operating under the
 20 understanding that the DEA wanted suspicious
 21 sales, not orders, right? That's what you
 22 say.
 23 MR. EPPICH: Object to the
 24 form.
 25 A. I say it: As you have

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1 outlined, wouldn't this be customer "orders"
 2 and not McKesson sales.
 3 QUESTIONS BY MR. BOGLE:
 4 Q. Right. Then you say: If a
 5 transaction/order is suspicious, we are not
 6 to fulfill the order, thus nothing to
 7 transmit.
 8 Right?
 9 A. That's what's stated, yes.
 10 Q. But as we just looked at in the
 11 prior three documents, starting in
 12 September 2005 all the way up to your last
 13 e-mail in September 2007, three different
 14 occasions where it's documented that the DEA
 15 wants reports of suspicious orders, not
 16 suspicious sales. Right?
 17 MR. EPPICH: Object to the
 18 form. Vague.
 19 A. They stated the orders.
 20 QUESTIONS BY MR. BOGLE:
 21 Q. Right. Not sales.
 22 A. And this is discussions for
 23 creating the CSMP program in CSMP, so this is
 24 development discussions to get to what
 25 eventually becomes the CSMP program.

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1 There was some collaboration or
2 agreement that took place whereas we were
3 sending information directly to DEA based on,
4 I think, the agreement from 2008.
5 Q. But if you go down to your
6 e-mail, your first e-mail response towards
7 the bottom of the first page, you
8 specifically say: If a transaction/order is
9 suspicious, we're not to fulfill the order,
10 thus nothing to transmit.
11 Right?
12 A. That was the discussion point.
13 Q. Right. But that's exactly the
14 opposite of what Mr. Mapes told you
15 September 11, 2007, when he's saying
16 specifically to report suspicious orders. To
17 stop the order, to block the order, and
18 report it, right?
19 MR. EPPICH: Objection.
20 QUESTIONS BY MR. BOGLE:
21 Q. You're saying here in the same
22 vein there would be nothing to transmit if
23 that happened.
24 MR. EPPICH: Object to the
25 form. Misstates the document.

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1 A. This was developmental
2 discussions in regards to what -- what and
3 how things would populate on reports and
4 transmits, and I honestly don't recall the
5 specifics or the outcome of this other than
6 what we were discussing in this
7 communication.
8 QUESTIONS BY MR. BOGLE:
9 Q. Okay. But three -- more than
10 three years after this first presentation
11 from Mr. Mapes in September 2005, you guys
12 are now in August 2008 and you're still not
13 clear on how to report suspicious orders that
14 you didn't fill? That's what this indicates,
15 right?
16 MR. EPPICH: Object to the
17 form. Calls for speculation,
18 misstates the document.
19 A. I don't recall what all
20 additional conversations are outside of this
21 one e-mail communication. But again, this
22 was our work that we were trying to work
23 towards obtaining a better program, which was
24 a CSMP program.
25 So this was just an element of

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1 that development and discussions on how to
2 get there, and, again, I don't know what else
3 was communicated.
4 QUESTIONS BY MR. BOGLE:
5 Q. But when you go back to the top
6 e-mail that you wrote, you're actually
7 discussing the potential options of how you
8 might report a suspicious order, right?
9 MR. EPPICH: Object to the
10 form.
11 QUESTIONS BY MR. BOGLE:
12 Q. How you would even do that.
13 MR. EPPICH: Object to the
14 form. Misstates the document.
15 A. Again, this is bouncing ideas
16 off of each other, coming up with development
17 on how these reports would work.
18 QUESTIONS BY MR. BOGLE:
19 Q. I guess my question is simply
20 that we've looked at three documents from
21 September 2005 to September 2007 where
22 members of the DEA are expressing that
23 suspicious orders need to be blocked and
24 reported when they are blocked.
25 How could it be possible that

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1 three years later you guys still don't know
2 how to do that?
3 MR. EPPICH: Object to the
4 form. Misstates the document.
5 Argumentative.
6 A. The process was difficult. The
7 process took time. It took time to
8 implement, it took time for development.
9 Again, this is just one piece
10 of that project review and trying to get to a
11 better program.
12 QUESTIONS BY MR. BOGLE:
13 Q. Was it so complicated that it
14 took more than three years to develop how to
15 report a suspicious order if it's been
16 blocked?
17 MR. EPPICH: Objection to the
18 form; misstates the document, assumes
19 facts not in evidence.
20 A. Again, it took time for the
21 development. We were working towards doing
22 the blocking of the transactions and this was
23 just part of that development process.
24 QUESTIONS BY MR. BOGLE:
25 Q. Okay. But, again, we looked at

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1 three documents; Exhibit 4, Exhibit 3, and
 2 Exhibit 20, all where the DEA is saying make
 3 a sales decision, block a sale, report
 4 suspicious orders when they're blocked. Yet
 5 we're looking now in August 2008 and you guys
 6 still don't know how to do that, right?
 7 MR. EPPICH: Objection to the
 8 form; misstates the document, assumes
 9 facts not in evidence, and asked and
 10 answered.
 11 A. It took us until the
 12 implementation of the CSMP in order to get
 13 our systems to where they could appropriately
 14 conduct the blocking.
 15 QUESTIONS BY MR. BOGLE:
 16 Q. And the reporting, it appears
 17 like, too, right? Because you're saying if
 18 they block it, you thought in August 27, 2008
 19 there would be nothing to transmit, no report
 20 to make if you blocked it.
 21 MR. EPPICH: Object to the
 22 form. Misstates the document.
 23 QUESTIONS BY MR. BOGLE:
 24 Q. Isn't that what you're saying
 25 here?

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1 MR. EPPICH: Same objections.
 2 A. I don't recall the context of
 3 this document.
 4 QUESTIONS BY MR. BOGLE:
 5 Q. Okay. Well, I'm looking at
 6 your own statement. I'm not asking you to
 7 interpret anybody else's. You say, on
 8 August 27, 2008, at 5:51 a.m.: If a
 9 transaction/order is suspicious, we're not to
 10 fulfill the order, thus nothing to transmit.
 11 That's exactly what you said,
 12 right?
 13 MR. EPPICH: Objection to the
 14 form; argumentative, asked and
 15 answered, misstates the document.
 16 QUESTIONS BY MR. BOGLE:
 17 Q. Did I read any of that
 18 incorrectly?
 19 A. This was the discussion in 2008
 20 10 years ago. I don't recall what all the
 21 other discussions that were going on. This
 22 was us working on the development process.
 23 Q. My question was simply did I
 24 read any portion of that sentence wrong?
 25 MR. EPPICH: Objection to the

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1 form.
 2 A. You read the e-mail.
 3 QUESTIONS BY MR. BOGLE:
 4 Q. Correctly, right?
 5 MR. EPPICH: Objection to the
 6 form.
 7 A. You read the e-mail.
 8 QUESTIONS BY MR. BOGLE:
 9 Q. I'm just asking if you think I
 10 read something wrong there.
 11 A. Not that I'm aware of.
 12 Q. Okay. And even after this
 13 discussion in August 2008, there were
 14 systematic failures at McKesson in reporting
 15 suspicious orders, weren't there?
 16 MR. EPPICH: Objection to the
 17 form; calls for speculation, assumes
 18 facts not in evidence.
 19 A. Not that I recall.
 20 QUESTIONS BY MR. BOGLE:
 21 Q. Okay. All right. Let me hand
 22 you what I'm marking as Exhibit 25. It's
 23 1.1443. It's also MCKMDL00409453.
 24 (McKesson-Hilliard Exhibit 25
 25 was marked for identification.)

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1 QUESTIONS BY MR. BOGLE:
 2 Q. You see what I've got here is a
 3 letter from November 4, 2014, from the U.S.
 4 Department of Justice, Drug Enforcement
 5 Administration.
 6 Do you see that?
 7 A. I see that.
 8 Q. And it's to a Geoffrey Hobart
 9 at Covington & Burling.
 10 Do you see that being the
 11 recipient?
 12 A. I see that.
 13 Q. And the re: line is
 14 Registration Consequences for McKesson
 15 Corporation for Violations of the Controlled
 16 Substances Act.
 17 Do you see that reference?
 18 A. I see that.
 19 Q. Okay. Let's take a look at a
 20 couple of things here in the letter. If
 21 you'd go to the second page, and I'm looking
 22 at the third paragraph here where it says:
 23 That having been said, we remain concerned
 24 that McKesson fails to appreciate the serious
 25 and systemic nature of the CSA-related

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1 problems that DEA has observed in its several
2 investigations into your client's operations.
3 Do you see that?
4 A. I see that.
5 Q. You were provided this letter
6 while you were at McKesson?
7 A. No, I was not.
8 Q. Okay. The last sentence -- the
9 last few sentences in that paragraph say:
10 The loss of business that McKesson may
11 experience as a result of surrendering DEA
12 CORs --
13 What are CORs?
14 MR. EPPICH: Objection,
15 foundation. Calls for speculation.
16 A. I don't know, actually.
17 QUESTIONS BY MR. BOGLE:
18 Q. If you go back to the first
19 page, you see where it says "DEA Certificate
20 of Registration" and it's a COR?
21 A. Yes, I see that now.
22 Q. All right. Let's go on back to
23 the sentence I was reading from: The loss of
24 business that McKesson may experience as a
25 result of surrendering DEA CORs is a

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1 justified and appropriate consequence that is
2 consistent with the public interest. Among
3 other reasons, we hope that McKesson
4 distribution centers that maintain DEA
5 registrations after a global settlement will
6 take their responsibilities under federal law
7 more seriously than they did after the 2008
8 settlement.
9 Do you see that?
10 A. Yes, I see that.
11 Q. Then it continues: In order to
12 release all McKesson-owned DEA registrants
13 from administrative liability as you have
14 requested, the agreed-upon registration
15 consequences must reflect not only the
16 gravity of the offenses, but national scope
17 of McKesson's failure to report suspicious
18 orders and to maintain effective controls
19 against diversion.
20 Do you see that?
21 A. Yes, I see that.
22 Q. Were you aware that McKesson
23 was being investigated by the DEA at this
24 time in 2014?
25 MR. EPPICH: Objection to the

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1 form; foundation.
2 A. Not that I recall. This is the
3 first time I've seen the form.
4 QUESTIONS BY MR. BOGLE:
5 Q. Let's go to the next page,
6 page .3. The first sentence there says:
7 Like its Colorado counterpart, McKesson's
8 Distribution Center at 38220 Plymouth Road,
9 Livonia, Michigan -- it gives a DEA
10 registration number -- reported no suspicious
11 orders for approximately five years after
12 McKesson's settlement with DOJ. McKesson
13 Livonia remained silent even as it supplied
14 26 pharmacies that were utilized in a drug
15 trafficking conspiracy that has since
16 resulted in the criminal conviction of the
17 owner of three pharmacies -- and it's
18 Babubhai Patel, and dozens of other
19 participants.
20 Do you see that?
21 A. I see that.
22 Q. Were you aware of that
23 allegation that McKesson didn't report any
24 suspicious orders from Livonia for five years
25 after the 2008 settlement?

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1 MR. EPPICH: Objection; calls
2 for speculation. Form.
3 A. No, I wasn't aware. I was not
4 really associated with the CSMP process at
5 that point.
6 QUESTIONS BY MR. BOGLE:
7 Q. From 2008 to 2013?
8 A. This is a 2014 document that
9 we're looking at, and, no, I don't recall
10 them not reporting anything.
11 Q. From 2008 to 2013?
12 A. I don't recall them reporting
13 anything.
14 Q. You don't recall them --
15 A. I don't recall whether they
16 reported anything or not.
17 Q. Okay. So you don't have any
18 specific information to say that's wrong,
19 that in fact, they did report a bunch of
20 suspicious orders in that five-year period,
21 do you?
22 MR. EPPICH: Objection, form.
23 Calls for speculation.
24 A. I don't recall having knowledge
25 of this, no.

<p style="text-align: right;">Page 306</p> <p>1 QUESTIONS BY MR. BOGLE:</p> <p>2 Q. Okay. Let's go down. They</p> <p>3 keep talking here about -- the next paragraph</p> <p>4 is about Washington Court House. They say:</p> <p>5 McKesson's systemic failures were also</p> <p>6 evident at its distribution center at</p> <p>7 3000 Kenskill Avenue, Washington Court House,</p> <p>8 Ohio. Here again, McKesson did not report</p> <p>9 any orders as suspicious for years after the</p> <p>10 2008 settlement with DOJ and DEA.</p> <p>11 Do you see that?</p> <p>12 A. I see that.</p> <p>13 Q. When DEA began to investigate</p> <p>14 this silence, McKesson's Regional Director of</p> <p>15 Regulatory Affairs told DEA investigators</p> <p>16 that he did not know what a suspicious order</p> <p>17 was and protested that DEA had not adequately</p> <p>18 defined the term.</p> <p>19 Do you see that?</p> <p>20 A. I see that.</p> <p>21 Q. Was that you that said that?</p> <p>22 MR. EPPICH: Objection; calls</p> <p>23 for speculation, foundation.</p> <p>24 A. No. I was not a regional</p> <p>25 director.</p>	<p style="text-align: right;">Page 308</p> <p>1 silent about suspicious orders received by</p> <p>2 its distribution center at 9 Aegean Drive,</p> <p>3 Methuen, Massachusetts. As with other</p> <p>4 distribution centers McKesson operated,</p> <p>5 McKesson failed to report any suspicious</p> <p>6 orders from May 2008 through November 2013,</p> <p>7 though it sold increasing amounts of</p> <p>8 oxycodone during the same time period, with</p> <p>9 little to no investigation.</p> <p>10 Do you see that?</p> <p>11 A. Yes, I see that.</p> <p>12 Q. Again, do you have any</p> <p>13 knowledge to the contrary that, in fact,</p> <p>14 Methuen did report suspicious orders during</p> <p>15 that time period?</p> <p>16 MR. EPPICH: Objection to the</p> <p>17 form; calls for speculation.</p> <p>18 A. I have no knowledge of it. I</p> <p>19 wasn't a regional director.</p> <p>20 QUESTIONS BY MR. BOGLE:</p> <p>21 Q. The last thing I want to look</p> <p>22 at here is on page .5. The first full</p> <p>23 paragraph says -- starts with "As noted</p> <p>24 above."</p> <p>25 Do you see that paragraph?</p>
<p style="text-align: right;">Page 307</p> <p>1 QUESTIONS BY MR. BOGLE:</p> <p>2 Q. Okay. All right. So if we go</p> <p>3 now to page .4, the first full paragraph</p> <p>4 says: McKesson's system to detect suspicious</p> <p>5 orders also fell short at the distribution</p> <p>6 center at 1515 Kendrick Lane, Lakeland,</p> <p>7 Florida. Once again, in derogation of its</p> <p>8 responsibilities under the CSA and the 2008</p> <p>9 MOA, McKesson Lakeland failed to report and</p> <p>10 suspicious orders to DEA for a five-year</p> <p>11 period.</p> <p>12 Do you see that?</p> <p>13 A. I see that.</p> <p>14 QUESTIONS BY MR. BOGLE:</p> <p>15 Q. Okay. Do you have any</p> <p>16 knowledge, personal knowledge, that that's an</p> <p>17 inaccurate statement?</p> <p>18 MR. EPPICH: Objection to the</p> <p>19 form. Calls for speculation.</p> <p>20 A. I have no knowledge of this,</p> <p>21 no.</p> <p>22 QUESTIONS BY MR. BOGLE:</p> <p>23 Q. Okay. They go on in the next</p> <p>24 paragraph to talk about another distribution</p> <p>25 center. It says: McKesson also remained</p>	<p style="text-align: right;">Page 309</p> <p>1 A. Yes, I see that.</p> <p>2 Q. It says: As noted above, the</p> <p>3 above examples are illustrative, not</p> <p>4 exhaustive. They are meant to illustrate</p> <p>5 what we mean when we say that we will be</p> <p>6 driven by the evidence that we could present</p> <p>7 in administrative proceedings against these</p> <p>8 registrants. We have attempted to highlight</p> <p>9 this evidence in the hopes that you and your</p> <p>10 client can fully understand why DEA believes</p> <p>11 that the failings at McKesson were as</p> <p>12 systemic as they were serious.</p> <p>13 Do you see that?</p> <p>14 A. I see that.</p> <p>15 Q. These are serious allegations,</p> <p>16 right?</p> <p>17 MR. EPPICH: Objection; calls</p> <p>18 for speculation. Form.</p> <p>19 A. It appears to be.</p> <p>20 QUESTIONS BY MR. BOGLE:</p> <p>21 Q. Okay. I'm going to hand you</p> <p>22 now what I'm marking as Exhibit 26, which is</p> <p>23 1.1432, and that's MCKMDL00409048.</p> <p>24 (McKesson-Hilliard Exhibit 26</p> <p>25 was marked for identification.)</p>

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1 QUESTIONS BY MR. BOGLE:
 2 Q. Okay. This is another letter
 3 from the U.S. Department of Justice, this one
 4 dated November 6, 2013.
 5 Do you see that?
 6 A. Yes, I see that.
 7 Q. Again sent to Geoffrey Hobart
 8 at Covington & Burling regarding Claims
 9 Against McKesson Corporation.
 10 Do you see that title?
 11 A. Yes, I see that.
 12 Q. Okay. The third paragraph
 13 there says: You are, no doubt, aware that
 14 McKesson entered into a Settlement Agreement
 15 with the United States in May of 2008. The
 16 Settlement Agreement covered the same type of
 17 conduct described in the preceding paragraph.
 18 The settlement included conduct that occurred
 19 at Landover distribution facility. Between
 20 May 2008 and November 15, 2011, McKesson did
 21 not submit any suspicious order reports
 22 relating to orders filled by the Landover
 23 facility.
 24 Do you see that reference?
 25 A. I see that.

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1 Q. Again, do you have any personal
 2 knowledge that that's incorrect regarding the
 3 suspicious orders for Landover for that time
 4 period?
 5 MR. EPPICH: Object to the
 6 form; calls for speculation.
 7 A. I don't have any specific
 8 knowledge.
 9 QUESTIONS BY MR. BOGLE:
 10 Q. And you know these
 11 investigations that we're looking at here in
 12 the letters from 2013 and 2014 ultimately
 13 culminated in another settlement that
 14 McKesson entered into with the DEA/DOJ,
 15 right?
 16 MR. EPPICH: Objection; calls
 17 for speculation. Object to the form.
 18 A. I wasn't part of the settlement
 19 agreement. I'm not sure what all was
 20 included in that.
 21 QUESTIONS BY MR. BOGLE:
 22 Q. Okay. I'm just asking if you
 23 know one was entered.
 24 A. Yes, I know that one was
 25 entered.

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1 Q. Okay. Where there was a
 2 \$150 million fine assessed?
 3 MR. EPPICH: Objection; calls
 4 for speculation.
 5 A. That was my understanding.
 6 QUESTIONS BY MR. BOGLE:
 7 Q. Okay. And do you also
 8 understand that as a part of that settlement
 9 agreement, McKesson accepted responsibility
 10 for failing to report suspicious orders?
 11 MR. EPPICH: Objection to the
 12 form; calls for speculation.
 13 A. No, I'm not aware of that. I
 14 don't think I was with McKesson when that was
 15 finalized.
 16 QUESTIONS BY MR. BOGLE:
 17 Q. Well, do you think from the
 18 time the settlement agreement was entered in
 19 2008 to the time you left the company that
 20 the company had a systemic failure to report
 21 suspicious orders of controlled substances?
 22 MR. EPPICH: Objection to the
 23 form. Foundation. Calls for
 24 speculation.
 25 A. I don't know. The regional

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1 directors handled the process and reviews and
 2 the systems were developed to become better
 3 and better. I'm not aware of the specifics
 4 of the allegation.
 5 QUESTIONS BY MR. BOGLE:
 6 Q. Did you ever check in with any
 7 of your other directors of regulatory affairs
 8 after 2008 to make sure they were reporting
 9 suspicious orders?
 10 MR. EPPICH: Object to the
 11 form.
 12 A. I don't recall.
 13 QUESTIONS BY MR. BOGLE:
 14 Q. Okay. Can you think of an
 15 instance where you specifically did do that?
 16 MR. EPPICH: Object to the
 17 form.
 18 A. I don't recall.
 19 QUESTIONS BY MR. BOGLE:
 20 Q. All right. We'll mark for you
 21 Exhibit 27, which is 1.88. That's
 22 MCKMDL00355350. And what I've handed you,
 23 sir, is the Administrative Memorandum
 24 Agreement that accompanied the 2017
 25 settlement between DOJ and McKesson, okay?

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1 A. Yes, I have it.
 2 Q. Okay. And I want to just point
 3 you to one specific passage here, and it's
 4 on .3. Number 2 says "Acceptance of
 5 Responsibility."
 6 Are you with me there?
 7 A. Yes, I am.
 8 Q. It says: On or about
 9 September 27, 2006, February 7, 2007, and
 10 December 27, 2007, DEA's Deputy Assistant
 11 Administrator, Office of Diversion Control,
 12 sent letters to every entity in the United
 13 States that was registered with DEA to
 14 manufacture or distribute controlled
 15 substances, including McKesson.
 16 Now, the September 27, 2006
 17 letter, that's one that we've actually
 18 reviewed here today, right?
 19 A. The Rannazzisi?
 20 Q. Yes, sir.
 21 MR. EPPICH: Objection to the
 22 form; foundation.
 23 QUESTIONS BY MR. BOGLE:
 24 Q. You recall reading that letter
 25 with me?

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1 A. The Rannazzisi letter, yes.
 2 Q. Okay. And again, that was a
 3 letter that you received, right?
 4 MR. EPPICH: Objection to the
 5 form; foundation.
 6 A. I did receive it at some point,
 7 yes.
 8 QUESTIONS BY MR. BOGLE:
 9 Q. Okay. It continues here: The
 10 DEA Letters contained, among other things,
 11 guidance for the identification and reporting
 12 of suspicious orders to DEA as required by
 13 21 C.F.R. Section 1301.74(b). McKesson
 14 acknowledges that, at various times during
 15 the time period from January 1, 2009 up
 16 through and including the Effective Date of
 17 this Agreement (the "Covered Time Period"),
 18 it did not identify or report to DEA certain
 19 orders placed by certain pharmacies which
 20 should have been detected by McKesson as
 21 suspicious based on the guidance contained in
 22 the DEA Letters about the requirements set
 23 forth in 21 C.F.R. 1301.74(b) and
 24 21 U.S.C. Section 842(a)(5).
 25 Do you see that?

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1 A. I see that.
 2 MR. EPPICH: Objection;
 3 foundation.
 4 QUESTIONS BY MR. BOGLE:
 5 Q. And again, do you have any
 6 personal knowledge that from January 1, 2009,
 7 up to when this was executed in January 2017,
 8 that McKesson in fact did report suspicious
 9 orders properly?
 10 MR. EPPICH: Objection to form.
 11 Object to the characterization.
 12 A. Programs were put in place to
 13 manage to this. I don't have specific
 14 knowledge of a particular instance where a
 15 report was done.
 16 QUESTIONS BY MR. BOGLE:
 17 Q. Okay. While you were with
 18 McKesson, did you have a sense -- I mean, you
 19 were there for nearly 20 years. Did you have
 20 a sense and feeling that McKesson would
 21 accept responsibility for things that it
 22 didn't do?
 23 MR. EPPICH: Object to the
 24 form; calls for speculation.
 25 A. I wasn't part of the agreement

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1 and I'm not familiar with this document, so I
 2 don't know.
 3 QUESTIONS BY MR. BOGLE:
 4 Q. I'm not specifically asking you
 5 about the document right now. I'm saying,
 6 during your 20 years spent at McKesson, do
 7 you have a belief that McKesson would accept
 8 responsibility for things that it didn't do?
 9 MR. EPPICH: Object to the
 10 form; calls for speculation.
 11 A. I don't know.
 12 QUESTIONS BY MR. BOGLE:
 13 Q. Okay. And can you think of any
 14 other instance in the 20 years you were at
 15 McKesson where the company paid anything
 16 approaching a \$150 million fine for something
 17 it didn't do?
 18 MR. EPPICH: Object to the
 19 form; calls for speculation.
 20 A. I don't know.
 21 QUESTIONS BY MR. BOGLE:
 22 Q. Can you think of any off the
 23 top of your head?
 24 MR. EPPICH: Same objections.
 25 A. I'm not aware of any.

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1 MR. BOGLE: Okay. No further
2 questions for you, sir.
3 THE WITNESS: Thank you.
4 MR. EPPICH: Let's go ahead and
5 take a break and go off the record.
6 THE VIDEOGRAPHER: Off the
7 record at 3:25.
8 (Recess taken, 3:25 p.m. to
9 3:46 p.m.)
10 THE VIDEOGRAPHER: All right,
11 stand by. The time is 3:46. Back on
12 the record.
13 EXAMINATION
14 QUESTIONS BY MR. EPPICH:
15 Q. Good afternoon, Mr. Hilliard.
16 My name is Chris Eppich, and I'm just going
17 to ask a few questions of you this afternoon.
18 A. Okay.
19 Q. I know it's been a long day so
20 I'll keep it pretty short.
21 You testified earlier today
22 that you joined McKesson in 1997. Is that
23 right?
24 A. That's correct.
25 Q. And can you briefly describe

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1 for us your duties as director of regulatory
2 affairs from 1997 to, say, 2006?
3 A. Well, from '97 to
4 approximately '98, the title was manager of
5 regulatory affairs. Still carried the same
6 job functions when I went to director of
7 regulatory affairs.
8 I had DEA oversight in regards
9 to compliance with DEA's Section 55, which
10 was the operating procedures for all things
11 DEA, and so that also included the suspicious
12 order monitoring program within it as well,
13 which was based on the previous working group
14 from the Suspicious Order Task Force that
15 McKesson was involved with prior to my
16 arrival. So that product, that result of
17 that meeting was developed into the
18 Section 55.
19 So I worked with our DC
20 managers to ensure that they were in
21 compliance with the Section 55 requirements,
22 including the suspicious order aspect of it.
23 I audited them as well and worked with them
24 with any issues that they may bring to my
25 attention, and I also worked on the ARCOS

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1 part of it and training the associates there
2 at the facilities in theft and loss reports
3 and sometimes investigations.
4 Also, I mentioned the audits, I
5 conducted the DEA audits as well as other
6 regulatory audits for the operations. In
7 addition to the DEA responsibilities, I also
8 had responsibilities under the waste
9 management or environmental aspect of it for
10 EPA, also for hazardous materials for DOT and
11 FAA transportation aspects of it; for
12 registrations, including the DEA
13 registrations for our facilities, and our
14 state licensures and state-controlled
15 substance licensures for our facilities.
16 I also worked with FDA
17 compliance for our facilities as well, and
18 that carried up to about 2006.
19 Q. Now, you recall your testimony
20 earlier about Form DU45?
21 A. Yes.
22 Q. Now, Form DU45, that was a
23 reporting form that McKesson submitted to the
24 DEA, correct?
25 A. That's correct.

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1 MR. BOGLE: Object to form.
2 QUESTIONS BY MR. EPPICH:
3 Q. Now, the DU45, was that a
4 requirement under Section 55, McKesson's Drug
5 Operations Manual?
6 A. Yes. That was part of the
7 operating manual.
8 Q. And tell me, how did DU45 come
9 into existence? How was it developed, to
10 your knowledge?
11 A. That was the development or the
12 product from the Suspicious Order Task Force
13 that industry, including McKesson, came
14 together, and my understanding, with DEA and
15 formulated this reporting mechanism which was
16 a -- a customer report that shows their
17 12-month sales for a given item, and then
18 they agreed to a factor based on the
19 schedule, whereas the opioid products had a
20 three times the average factor and the other
21 controlled substances had an eight times
22 factor associated with them.
23 And so that report was to be
24 delivered to the DEA upon -- nightly, like I
25 said it would be delivered, and then also

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1 they were summarized and provided on a
2 monthly basis.

3 Q. Do you recall your testimony
4 earlier with Mr. Bogle relating to an Order
5 to Show Cause for the Lakeland facility of
6 McKesson?

7 A. Yes, I do.

8 Q. And if you wouldn't mind
9 pulling out Exhibit 6. It should be in front
10 of you still.

11 THE REPORTER: They're in
12 order, sir.

13 QUESTIONS BY MR. EPPICH:

14 Q. Now, if you recall, Mr. Bogle
15 asked you a few questions about Exhibit 6.
16 Do you remember that?

17 A. Yes, I do.

18 Q. I'd like you to turn to
19 page .17 -- or actually .16, which is Bates
20 ending 496321.

21 A. I'm sorry, could you repeat the
22 Bates number?

23 Q. It's 496321 on the bottom
24 right.

25 Are you there, sir?

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1 A. Yes, I am.

2 Q. Now, if you'd turn to page 5 of
3 this document, which is Bates number 496325.
4 Are you there, sir?

5 A. Yes, I am.

6 Q. Do you recall providing some
7 testimony, answering some questions from
8 Mr. Bogle on this page?

9 A. Today, yes.

10 Q. Before your deposition today,
11 Mr. Hilliard, had you ever seen this document
12 before, this government's pre-hearing
13 statement?

14 A. Not this, no.

15 Q. And if you'd turn to page 10 of
16 this pre-hearing statement, which is Bates
17 496328.

18 Do you see that, sir?

19 A. I see that.

20 Q. Had you ever seen this page of
21 this document before your deposition today?

22 A. No, I haven't.

23 Q. Okay. Well, let's turn to
24 Bates number 496347, which is Plaintiff's
25 Exhibit .42, if that's easier, in the upper

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1 right corner.

2 A. .42.

3 Q. And you recall Mr. Bogle asked
4 you some questions about this document, in
5 particular about some proposed testimony that
6 you were to make, which starts on page --
7 you'll have to excuse me -- it starts on
8 page --

9 A. 18?

10 Q. 18, yes, sir.

11 Now, before preparing for your
12 deposition today, sir, had you seen this
13 pre-hearing statement before?

14 A. I had not.

15 Q. Now, I interrupted you when you
16 were talking about your responsibilities as
17 the director of regulatory affairs. What
18 were your responsibilities between the years
19 2006 to 2008?

20 A. I still had the same
21 responsibilities, with additional
22 responsibilities as it related to working
23 with our DC managers on identified customers
24 by the DEA and then starting to develop the
25 LDMP processes and crafting the SOP, which

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1 then developed into the CSMP.

2 Q. So you worked on the
3 development of the LDMP and then the
4 development of the CSMP. Is that right?

5 A. Correct.

6 Q. Now, that -- and do you recall
7 when the CSMP was released?

8 A. I believe it was 2008.

9 Q. Okay. And after 2008, after
10 the release of the CSMP, what were your
11 responsibilities as a director of regulatory
12 affairs at McKesson?

13 A. I still helped to work with the
14 SOPs, but the regional directors came onboard
15 and so they managed the correlation with the
16 DCs, their respective DCs in those regions as
17 it relates to the CSMP processes and
18 procedures, and I still continued with --
19 again, with the normal DEA audits and then
20 also continued with my other responsibilities
21 under FDA and HAZMAT and EPA.

22 Q. Now, do you recall -- do you
23 recall who your supervisors were? Let's go
24 ahead and take it back in time. Let's take
25 it from about 1997 to the 2006 time period.

<p style="text-align: right;">Page 326</p> <p>1 Do you recall who your supervisors were?</p> <p>2 A. So when I joined in '97, Dan</p> <p>3 White was my boss and he was a VP of</p> <p>4 regulatory. And then after Dan White, I</p> <p>5 believe it was Don Walker. Again, I don't</p> <p>6 remember the exact dates. I believe it was</p> <p>7 Don Walker, and then to Ron Bone. I know I</p> <p>8 was reporting to Ron Bone in the 2005-2006</p> <p>9 time frame.</p> <p>10 Ron left and then I was</p> <p>11 reporting to Bruce and -- Bruce Russell and</p> <p>12 Don Walker; and then once Bruce retired, it</p> <p>13 was directly to Don Walker. And then finally</p> <p>14 I reported to Krista Peck.</p> <p>15 Q. You testified earlier today</p> <p>16 that you were familiar with the Controlled</p> <p>17 Substances Act.</p> <p>18 Do you remember that testimony?</p> <p>19 A. Yes, I do.</p> <p>20 Q. Now, during -- and you</p> <p>21 testified that you were in the regulatory</p> <p>22 affairs department at McKesson from 1997 all</p> <p>23 the way to 2016, correct?</p> <p>24 A. That's correct.</p> <p>25 Q. Now, during your time at</p>	<p style="text-align: right;">Page 328</p> <p>1 were very collaborative.</p> <p>2 We also worked with DEA in</p> <p>3 respects where our DC managers would have a</p> <p>4 relationship with the local DEA offices, so</p> <p>5 if they needed assistance with something,</p> <p>6 emergency delivery orders, natural disasters</p> <p>7 occurring, you know, they were able to reach</p> <p>8 out and obtain assistance from their local</p> <p>9 agents.</p> <p>10 We also worked integral as part</p> <p>11 of the CSOS implementation. We were the --</p> <p>12 McKesson, myself and Jenny Melton, we worked</p> <p>13 with CSOS, with DEA and DEA's partners that</p> <p>14 they -- third-party partners that came in to</p> <p>15 help design the CSOS program, and so we</p> <p>16 worked throughout that development process</p> <p>17 with DEA, very collaborative meetings and</p> <p>18 work to establish that.</p> <p>19 We also worked with them on</p> <p>20 methadone restrictions. They came in -- they</p> <p>21 asked us to come in and discuss it with them.</p> <p>22 And so I think we had a lot of collaboration</p> <p>23 that took place. You know, they have</p> <p>24 industry association meetings or conferences</p> <p>25 that DEA would hold pharmaceutical one year,</p>
<p style="text-align: right;">Page 327</p> <p>1 McKesson, are you aware of any changes to the</p> <p>2 Controlled Substances Act?</p> <p>3 A. No, I'm not.</p> <p>4 Q. The CSA didn't change at all</p> <p>5 during your tenure at McKesson?</p> <p>6 MR. BOGLE: Object to form.</p> <p>7 A. That's correct.</p> <p>8 QUESTIONS BY MR. EPPICH:</p> <p>9 Q. Now, have directives from the</p> <p>10 DEA changed over that period?</p> <p>11 A. Yes, they have.</p> <p>12 Q. Can you provide us any examples</p> <p>13 of how DEA directives have changed while you</p> <p>14 were at McKesson?</p> <p>15 MR. BOGLE: Object to form.</p> <p>16 A. The meetings that we</p> <p>17 accompanied at headquarters with Rannazzisi</p> <p>18 so that kind of was the dividing line. I</p> <p>19 think we had a pretty good relationship with</p> <p>20 DEA before 2006. I mean, we worked with</p> <p>21 them.</p> <p>22 We would have routine fiscal</p> <p>23 audits. The fiscal audits were not, you</p> <p>24 know, argumentative and such. They were</p> <p>25 typically ran very well. Many times they</p>	<p style="text-align: right;">Page 329</p> <p>1 alternate year would be at least one.</p> <p>2 So there were, you know,</p> <p>3 training -- the industry, essentially,</p> <p>4 working with the industry, providing</p> <p>5 information to the industry.</p> <p>6 2006, after the meeting with</p> <p>7 Rannazzisi, there was a different directive</p> <p>8 before that. There was new requirements or</p> <p>9 new interpretations that came out of that,</p> <p>10 more right -- understanding your customer and</p> <p>11 blocking orders. And so these were things</p> <p>12 that weren't part of the CSA but were now</p> <p>13 coming out.</p> <p>14 And even when we left the</p> <p>15 meeting for the internet pharmacy</p> <p>16 discussions, it seemed collaborative because</p> <p>17 they were going to assist us by providing us</p> <p>18 with customers that we could go out and</p> <p>19 investigate.</p> <p>20 So they had the data from the</p> <p>21 ARCOS and such and they knew the players that</p> <p>22 needed to be looked at and they were giving</p> <p>23 us the names, and that was very collaborative</p> <p>24 for them to do that. And then that kind of</p> <p>25 stopped for some reason.</p>

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1 But it seemed to be around
 2 2006, after that Rannazzisi discussions, that
 3 that occurred.
 4 MR. BOGLE: Object as improper
 5 narrative.
 6 QUESTIONS BY MR. EPPICH:
 7 Q. And so what was your
 8 understanding of McKesson's relationship with
 9 the DEA after the meetings in 2006 with
 10 Mr. Rannazzisi?
 11 MR. BOGLE: Object to form.
 12 A. The -- we expected to still,
 13 you know, get correspondence from them in
 14 regards to pharmacies that we needed to look
 15 into. Again, that stopped, and when we went
 16 back and we did have that meeting with
 17 Rannazzisi, that meeting is not how -- what
 18 we expected when we walked into it.
 19 It wasn't until we got into the
 20 meeting that -- when Rannazzisi came in that
 21 things changed, and that was the show-cause
 22 proposal that he was making.
 23 So this is -- and then the
 24 letter that he had sent out to all
 25 registrants as a guidance document, you know,

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1 in regards to blocking orders, it really
 2 just -- the different understanding of
 3 getting behind the counter to know your
 4 customers, your business, you know, that was
 5 a different philosophy, I think, than what it
 6 had been in the past.
 7 QUESTIONS BY MR. EPPICH:
 8 Q. Mr. Hilliard, are you familiar
 9 with the ARCOS reporting system?
 10 A. Yes, I am.
 11 Q. What is the ARCOS reporting
 12 system?
 13 A. It's a reporting system that's
 14 put in place way past when I started in the
 15 industry, that the DEA runs. It's run out of
 16 headquarters and it's a reporting system for
 17 manufacturers and distributors.
 18 So manufacturers and
 19 distributors have to submit essentially all
 20 the raw data for their transactions for
 21 Schedule IIs and Schedule III narcotics, and
 22 this included all the sales receipts,
 23 returns, theft/loss, no activity, if you had
 24 no activity for a registrant during the
 25 month.

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1 So it had monthly reporting
 2 requirements for every registrant that's a
 3 manufacturer or distributor.
 4 Q. So McKesson has to submit its
 5 sales data to the DEA as a part of this ARCOS
 6 reporting requirement? Is that correct?
 7 MR. BOGLE: Object. Object to
 8 form.
 9 A. That's correct.
 10 QUESTIONS BY MR. EPPICH:
 11 Q. And do other distributors have
 12 to similarly report their sales data for
 13 controlled substances to this ARCOS reporting
 14 system?
 15 MR. BOGLE: Object to form.
 16 A. That's correct.
 17 QUESTIONS BY MR. EPPICH:
 18 Q. Does McKesson have access to
 19 other distributors' data that's reported to
 20 ARCOS?
 21 A. No, they don't. We asked for
 22 it.
 23 Q. Who has access to the ARCOS
 24 reporting data?
 25 A. Only the DEA.

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1 Q. Did McKesson have the ability
 2 to know -- let me strike that.
 3 During your time at McKesson,
 4 did McKesson have the ability to know how
 5 many opioids it was providing to pharmacies
 6 in a given city?
 7 A. The ARCOS transactions don't
 8 record by city, but there was probably a
 9 reporting mechanism where they could look
 10 that up.
 11 Q. Did McKesson know how many
 12 opioids other distributors were providing
 13 pharmacies in a given city?
 14 MR. BOGLE: Object to form.
 15 A. No. They're not allowed to do
 16 that.
 17 QUESTIONS BY MR. EPPICH:
 18 Q. You may recall a few moments
 19 ago Mr. Bogle asked you some questions about
 20 Exhibit 27. Do you have Exhibit 27 in front
 21 of you?
 22 A. Yes, I do.
 23 Q. Now, Exhibit 27 is titled the
 24 Administrative Memorandum of Agreement.
 25 Do you see that?

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1 A. I see it.
 2 Q. Mr. Bogle had you turn to
 3 page 3 of this document, which is Bates
 4 ending 355352.
 5 A. I see that.
 6 Q. Do you remember that, sir?
 7 A. Yes, I do.
 8 Q. And he read Section 2,
 9 Acceptance of Responsibility, to you.
 10 Do you remember that testimony?
 11 A. Yes, I do.
 12 Q. Now, about halfway down this
 13 paragraph, the paragraph reads: McKesson
 14 acknowledges that, at various times during
 15 the period from January 1, 2009, up through
 16 and including the Effective Date of this
 17 Agreement, it did not identify or report to
 18 DEA certain orders placed by certain
 19 pharmacies which should have been detected by
 20 McKesson as suspicious based on the guidance
 21 contained in the DEA Letters and -- about the
 22 requirements set forth in 21 C.F.R.
 23 1307.174(b) and 21 U.S.C. 842(a)(5).
 24 Do you see that, sir?
 25 A. Yes, I see it.

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1 Q. Now, before your deposition
 2 today, had you ever seen Exhibit 27?
 3 A. No, I haven't.
 4 Q. And while you were at McKesson,
 5 did anyone ask you to investigate any of the
 6 pharmacies' alleged activity that's described
 7 in this document for this period January 1,
 8 2009, to the date of this agreement?
 9 A. No.
 10 Q. Do you have any knowledge about
 11 the allegations described in Exhibit 27?
 12 A. Not that I recall.
 13 Q. If you could turn to
 14 Exhibit 26. Mr. Bogle introduced Exhibit 26
 15 to you.
 16 Do you remember that?
 17 A. Yes, I do.
 18 Q. Exhibit 26 is a November 6,
 19 2013 letter to Mr. Geoff Hobart.
 20 Do you see that?
 21 A. Yes, I see that.
 22 Q. Before the deposition today,
 23 had you ever seen Exhibit 26 before?
 24 A. No, I haven't.
 25 Q. Have you ever been asked to

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1 provide any insights or investigation work
 2 into any of the allegations provided or any
 3 statements provided in Exhibit 26?
 4 A. Not that I can -- not that I
 5 recall.
 6 Q. If we could turn to Exhibit 25.
 7 Do you have that one in front of you?
 8 A. Yes, I do.
 9 Q. Now, Exhibit 25 is a
 10 November 4, 2014 letter from the DOJ to Geoff
 11 Hobart.
 12 Do you see that?
 13 A. Yes, I see that.
 14 Q. Before your deposition today,
 15 had you ever seen Exhibit 25 before?
 16 A. No, I haven't.
 17 Q. Did anyone at McKesson ever ask
 18 you to investigate any of the allegations you
 19 reviewed with Mr. Bogle earlier today on
 20 Exhibit 25?
 21 A. No, not that I recall.
 22 Q. Thank you.
 23 We mentioned -- you discussed
 24 earlier, testified earlier with Mr. Bogle
 25 about the LDMP and the CSMP program.

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1 Do you remember that testimony?
 2 A. Yes, I do.
 3 Q. Now, under the CSMP, the
 4 CSMP -- did the CSMP block all orders that
 5 exceeded an established threshold for that
 6 particular base code and company?
 7 A. Yes, they did.
 8 MR. BOGLE: Object to form.
 9 QUESTIONS BY MR. EPPICH:
 10 Q. And at McKesson, in your time
 11 at McKesson, have all orders that have
 12 exceeded a given threshold for a base code
 13 for a given company been blocked under the
 14 CSMP program?
 15 MR. BOGLE: Object to form.
 16 A. Yes, to my knowledge.
 17 QUESTIONS BY MR. EPPICH:
 18 Q. You talked briefly earlier
 19 about the evolution of the CSMP.
 20 Do you remember that testimony?
 21 A. I believe so.
 22 Q. Can you talk to us a little
 23 bit, describe the evolution of the CSMP since
 24 it was implemented in 2008 to the time you
 25 left the company in 2016?

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1 A. The big thing about CSMP was it
2 ran off of the base code ingredient, so it
3 accumulated all the like chemistries
4 together. It also was based off of
5 thresholds that would block orders for all
6 controlled substances as opposed to just the
7 lifestyle ones in the previous program.

8 And I know as it progressed --
9 again, I wasn't part of the work effort on
10 it, but I know that they worked with the
11 company AIG and developed these algorithms
12 that provided better threshold data, and I
13 believe it even manages -- the system manages
14 the thresholds and reduces the thresholds as
15 necessary based on the statistics that were
16 listed in the algorithm.

17 Q. Thank you, Mr. Hilliard.

18 Mr. Hilliard, you worked at
19 McKesson for over 20 years. How would you
20 describe McKesson's culture in the area of
21 compliance and regulatory affairs?

22 A. I enjoyed working at McKesson
23 and working with my colleagues. I know that
24 myself and my colleagues always worked with
25 the utmost integrity and always believed in

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1 what we were doing and strived to do the
2 right thing, and as they brought new folks in
3 and I worked with some of them, they too were
4 on the same page and had the same goals that
5 we had.

6 Q. Thank you, Mr. Hilliard.

7 MR. EPPICH: I have no further
8 questions.

9 MR. BOGLE: I've just got a few
10 follow-ups. It's your call,
11 Mr. Hilliard. If you're okay looking
12 straight ahead, I've probably got like
13 six or seven questions for you.

14 THE WITNESS: That's fine.

15 MR. BOGLE: If you want me to
16 move back over there, I really don't
17 care.

18 THE WITNESS: That's fine.

19 MR. BOGLE: You good? Okay.
20 Just -- Chris is going to tell you to
21 look straight ahead. Don't look at
22 me, which is probably easy for you to
23 do.

24 All right. I'm ready.

25 --oOo--

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1 FURTHER EXAMINATION

2 QUESTIONS BY MR. BOGLE:

3 Q. Okay. Following up kind of
4 where you left off there, you mentioned some
5 work that McKesson has done with AGI in
6 recent years? Do you recall talking about
7 that a minute ago?

8 A. Yes, I do.

9 Q. Okay. And you had no direct
10 involvement in any work with AGI and
11 McKesson, right?

12 A. That's correct.

13 Q. You have no firsthand knowledge
14 of what AGI has done work-wise for McKesson,
15 right?

16 A. Not specifically.

17 Q. Okay. And you said, to your
18 knowledge, all orders have been blocked under
19 the CSMP once the client reaches a -- the set
20 threshold.

21 Do you recall saying that a
22 minute ago?

23 A. Yes, I do.

24 Q. Okay. Have you actually
25 specifically tracked that over time from 2008

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1 to 2016, the blocking of orders under the
2 CSMP for specific customers?

3 A. I personally haven't because
4 that's what the other regional directors' job
5 functions entail was managing that program.
6 I just worked on the SOPs and updates to
7 assist where I could --

8 Q. Okay.

9 A. -- administratively.

10 Q. And you said that in regard to
11 the CSMP blocking all orders once a threshold
12 is reached, that would occur unless a
13 Threshold Change Request was requested and
14 granted, right?

15 A. I'm sorry, repeat the question.

16 MR. EPPICH: Object to the
17 form.

18 QUESTIONS BY MR. BOGLE:

19 Q. Yeah, so let me reask it.

20 If a customer reaches a
21 threshold, that threshold can be increased
22 through a Threshold Change Request, right?

23 MR. EPPICH: Object to the
24 form.

25 A. There was a process in place

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1 through a Threshold Change Request form that
 2 would require the due diligence to
 3 substantiate any changes to the thresholds.
 4 QUESTIONS BY MR. BOGLE:
 5 Q. Right. But a threshold could
 6 be changed using the Threshold Change Request
 7 process under the CSMP. True?
 8 MR. EPPICH: Object to the
 9 form.
 10 A. That was part of the process
 11 through substantiation.
 12 QUESTIONS BY MR. BOGLE:
 13 Q. Okay. And you mentioned that
 14 McKesson would not know whether its customers
 15 were getting controlled substances from other
 16 distributors.
 17 Do you recall that?
 18 A. Yes, I do.
 19 Q. Okay. Is there anything
 20 specifically prohibiting McKesson from asking
 21 their customers for that information?
 22 MR. EPPICH: Object to the
 23 form. Calls for speculation.
 24 A. There's some legal requirements
 25 there that -- for sharing customer

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1 information that two companies are not
 2 allowed to conspire.
 3 QUESTIONS BY MR. BOGLE:
 4 Q. Oh. So you're saying that
 5 McKesson is not allowed under the law to ask
 6 its customers if they're receiving opioids
 7 from other distributors?
 8 MR. EPPICH: Object to the
 9 form. Misstates prior testimony,
 10 calls for a legal conclusion.
 11 A. Your original question, I
 12 believe, was whether or not we asked our
 13 competitors for their sales information. So
 14 as far as asking customers, I'm not sure.
 15 QUESTIONS BY MR. BOGLE:
 16 Q. Okay. If I asked it otherwise.
 17 I was -- meant to be talking about your
 18 customers, not your competitors.
 19 A. Yeah, I'm not sure.
 20 Q. Okay. But you're not aware of
 21 any specific prohibition for McKesson asking
 22 its customers whether it's purchasing opioids
 23 from other distributors, do you?
 24 A. I don't know.
 25 MR. EPPICH: Object to the

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1 form; calls for speculation.
 2 QUESTIONS BY MR. BOGLE:
 3 Q. You said that in 2006, there
 4 were some new things coming from the DEA, new
 5 directives, one you listed as blocking
 6 orders. Do you recall mentioning that, that
 7 was a new directive in the 2006 time frame?
 8 MR. EPPICH: Object to the
 9 form.
 10 A. Yes, I do.
 11 QUESTIONS BY MR. BOGLE:
 12 Q. Okay. You think it would be a
 13 bad corporate policy for McKesson prior to
 14 2006 to be blocking orders that it deemed
 15 suspicious for opioids?
 16 MR. EPPICH: Object to the
 17 form; calls for speculation.
 18 A. I don't know. We were working
 19 under the Suspicious Order Task Force
 20 product, if you will, that came out of that
 21 meeting that other industry players were also
 22 conducting, and we were complying with the
 23 CSA requirements with that.
 24 QUESTIONS BY MR. BOGLE:
 25 Q. Yeah, so I'm not asking you

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1 specifically about the task force or the CSA
 2 requirements. I'm talking about what a good
 3 company would do, and I'm asking you: Do you
 4 have a specific opinion that McKesson, in
 5 attempting to be a good corporate citizen,
 6 would be doing a bad thing in blocking orders
 7 it deemed suspicious for opioids prior to
 8 2006?
 9 MR. EPPICH: Object to the
 10 form; calls for speculation.
 11 A. I don't know.
 12 QUESTIONS BY MR. BOGLE:
 13 Q. Okay. Now, you also mentioned
 14 it was a new thing in 2006, the "Know Your
 15 Customer" directive from DEA, right? That
 16 that was a new thing.
 17 MR. EPPICH: Object to form.
 18 A. The way it was -- the way it
 19 was structured or the way it was being
 20 presented differently from that aspect.
 21 QUESTIONS BY MR. BOGLE:
 22 Q. You think it would ever be a
 23 bad thing, prior to 2006, for McKesson to
 24 know what its customers were doing with the
 25 opioids it was providing to them?

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1 MR. EPPICH: Object to the
2 form; calls for speculation.
3 Foundation.
4 A. The "Know Your Customer"
5 terminology was not a term prior to that. We
6 had procedures in place to understand our
7 customer business activity and to vet the
8 customers out.
9 But the change in 2006 was in
10 regards to really digging in deep into their
11 business activities, and I always called it
12 getting behind the counter.
13 MR. BOGLE: Okay. Move to
14 strike as nonresponsive.
15 QUESTIONS BY MR. BOGLE:
16 Q. My question was simply: Do you
17 think it would have been a bad thing, prior
18 to 2006, for McKesson to know what its
19 customers were doing with the opioids that
20 McKesson was distributing to them?
21 MR. EPPICH: Object to form;
22 asked and answered.
23 A. Again, we were doing what we
24 believed was the correct thing under the CSA
25 with the process and procedures that we had

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1 in place.
2 QUESTIONS BY MR. BOGLE:
3 Q. Yeah. So I'm not talking about
4 the CSA. I'm talking about, again, what a
5 good company would do.
6 Do you think it would be a bad
7 thing for McKesson, in an attempt to be a
8 good corporate citizen, to at all times know
9 what its customers were doing with the
10 opioids it was distributing to them?
11 MR. EPPICH: Object to the
12 form; asked and answered.
13 A. We had processes in place to
14 comply with the CSA, and I can't specifically
15 speak to everybody in McKesson.
16 QUESTIONS BY MR. BOGLE:
17 Q. Okay. And I'm not -- okay.
18 Let me ask it to you this way: Do you think,
19 as Gary Hilliard, director of regulatory
20 affairs for nearly 20 years at McKesson,
21 that -- is your personal belief that it would
22 be a bad thing for McKesson to know what its
23 customers were doing with opioids McKesson
24 was distributing to them? What is your
25 personal opinion?

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1 MR. EPPICH: Object to the
2 form; asked and answered.
3 A. As I say, we believed that we
4 were doing what was required, and we had
5 means to investigate and look into our
6 customers and their business activities.
7 QUESTIONS BY MR. BOGLE:
8 Q. Would it be a bad thing to know
9 what your customer is doing with the opioids
10 you're giving them? That's my question.
11 MR. EPPICH: Objection, form.
12 Asked and answered.
13 A. Our customers were registered
14 with the DEA. We serviced our customers that
15 had DEA registrations and were receiving
16 prescriptions from DEA-registered physicians.
17 We believed we were complying with the CSA
18 requirements.
19 QUESTIONS BY MR. BOGLE:
20 Q. Okay. So as long as they were
21 registered with the DEA, that was all you
22 needed to know about your customer, right?
23 MR. EPPICH: Objection.
24 Misstates the prior testimony. Form.
25 A. Again, we were doing what we

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1 believed was correct under the CSA.
2 QUESTIONS BY MR. BOGLE:
3 Q. Which was if they had a
4 registration, they were good to go, right?
5 MR. EPPICH: Objection to form;
6 asked and answered.
7 A. That was only one element of
8 the processes in place at McKesson for
9 servicing our customers.
10 QUESTIONS BY MR. BOGLE:
11 Q. You mentioned, again, that your
12 understanding is the DU45 was developed from
13 some DEA task force meeting.
14 Do you recall talking about
15 that?
16 MR. EPPICH: Objection to the
17 form, vague.
18 QUESTIONS BY MR. BOGLE:
19 Q. I'm just trying to orient you
20 to the prior question. Do you recall talking
21 about that with your counsel?
22 A. Yes.
23 Q. Okay. And again, you weren't
24 present for any such task force meeting,
25 right?

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1 MR. EPPICH: Objection to the
2 form.
3 A. Correct, I was not at the task
4 force.
5 QUESTIONS BY MR. BOGLE:
6 Q. So you have no firsthand
7 knowledge about what actually happened at
8 that task force meeting, do you?
9 MR. EPPICH: Objection to the
10 form.
11 A. I read the documents that came
12 out of that. The Section 55 information and
13 reports that were created for the processes
14 that McKesson had were based on that output.
15 QUESTIONS BY MR. BOGLE:
16 Q. Do you have any documents that
17 came out of that meeting?
18 A. I do not currently.
19 MR. BOGLE: Okay. No further
20 questions.
21 MR. EPPICH: Thank you.
22 Before we get off the record,
23 let me designate the transcript as
24 highly confidential, and we'll read
25 and sign.

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1 THE REPORTER: Thank you, sir.
2 MR. EPPICH: Thank you.
3 THE VIDEOGRAPHER: Off the
4 record at 4:20.
5 (Deposition recessed at
6 4:20 p.m.)
7 --oOo--
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CERTIFICATE

1
2
3 I, SUSAN PERRY MILLER, Registered
4 Diplomate Reporter, Certified Realtime
Reporter, Certified Court Reporter and Notary
5 Public, do hereby certify that prior to the
commencement of the examination, GARY
6 HILLIARD was duly sworn by me to testify to
the truth, the whole truth and nothing but
7 the truth;
8 That pursuant to Rule 30 of the
Federal Rules of Civil Procedure, signature
of the witness was reserved by the witness or
9 other party before the conclusion of the
deposition;
10 That the foregoing is a verbatim
transcript of the testimony as taken
11 stenographically by and before me at the
time, place and on the date hereinbefore set
12 forth, to the best of my ability.
13 I DO FURTHER CERTIFY that I am
14 neither a relative nor employee nor attorney
nor counsel of any of the parties to this
15 action, and that I am neither a relative nor
employee of such attorney or counsel, and
16 that I am not financially interested in the
17 action.
18
19
20 Susan Perry Miller
CSR-TX, CCR-LA, CSR-CA-13648
Registered Diplomate Reporter
21 Certified Realtime Reporter
Certified Realtime Captioner
22 NCRA Realtime Systems Administrator
Notary Public, State of Texas
23 My Commission Expires 03/30/2020
24
25 Dated: 14th of January, 2019

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ACKNOWLEDGMENT OF DEPONENT

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2
3
4 I, GARY HILLIARD, do hereby
5 certify that I have read the foregoing pages
and that the same is a correct transcription
6 of the answers given by me to the questions
therein propounded, except for the
7 corrections or changes in form or substance,
if any, noted in the attached
Errata Sheet.
8
9
10
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12

13 GARY HILLIARD DATE

14
15
16
17
18 Subscribed and sworn
to before me this
19 ____ day of ____, 20____.
20 My commission expires:_____
21

22 Notary Public
23
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25

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